

imply that re-enfranchisement equates voting. In that case, strict scrutiny still applies because the challenged statute then implicates a fundamental interest: voting. *Id.*

Because § 67-91(C)(2) satisfies both *Rodriguez* factors, the *Harper/Bearden* exception applies here. This Court should apply strict scrutiny, not rational basis review. As conceded by the state of Marshall at oral argument, § 67-91(C)(2) fails strict scrutiny. J.A. 13. § 67-91(C)(2) therefore violates Equal Protection and is unconstitutional.

**II. Alternatively, § 67-91(C)(2) violates Equal Protection because it fails rational basis review.**

Even applying rational basis review, § 67-91(C)(2) still violates Equal Protection. To satisfy rational basis review, a law must be rationally related to a legitimate government interest. *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993). However, this highly deferential review standard is not toothless. *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981). § 67-91(C)(2) fails rational basis review because there is no rational relationship between the classifications and proffered interest, for both indigent and monied, and violent and non-violent felons.

A. There is no rational relationship between indigency and responsible exercise of the franchise.

§ 67-91(C)(2) fails rational basis review because there is no rational relationship between indigency and one's inability to "responsibly exercise the franchise." The district court, again citing *Jones*, held that the state of Marshall can "rationally conclude that felons who have completed all terms of their sentences, including paying their fines, fees, costs, and restitution, are more likely to responsibly exercise the franchise than those who have not." J.A. 9. As an initial matter, the Court has, more than five decades ago, explicitly rejected the argument that one's ability to pay is relevant to the exercise of franchise. *Harper*, 383 U.S. at 669 ("Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.").

Granted, perhaps there is an argument that felons who can afford to, but choose not to pay their financial obligations are less responsible voters. But that argument fails for two reasons. First, the state of Marshall can effectively preclude felons who are unwilling to pay, while including felons who are willing but unable to pay, by creating an indigency exception. The Court has more than once instructed in cases within the *Harper/Bearden* exception, that an indigency exception would have cured the constitutional defects at issue. *Griffin*, 351 U.S. at 29; *Britt v. N.C.*, 404 U.S. 226, 228 (1971); *Gardner*, 393 U.S. at 370; *Draper*, 372 U.S. at 497-98; *Eskridge v. Wash. Prison Bd.*, 357 U.S. 214, 216 (1958).

Secondly—and more importantly—what is at issue here is the constitutionality of § 67-91(C)(2) with respect to indigent felons who simply cannot afford to pay. Rational basis must be judged with respect to those typical of the disadvantaged class. *Califano v. Jobst*, 434 U.S. 47, 55 (1977). There is no basis to believe that an indigent felon manifests a higher degree of disregard for the law than a monied felon, all else being equal. While rational basis review demands only “any reasonably conceivable state of facts that could provide a rational basis for the classification,” the proffered basis necessarily, as a threshold matter, must be “reasonably conceivable.” *Beach Commc’ns, Inc.*, 508 U.S. at 313. Such threshold rationality does not exist here. Granting the right to vote to monied felons while denying so to indigent felons does not rationally relate to Marshall’s interest in having a responsible electorate. *Owens v. Barnes*, 711 F.2d 25, 27 (3d Cir. 1983) (holding that states cannot disenfranchise persons based on irrational reasons such as eye color). The state of Marshall cannot refuse felons re-enfranchisement based on the irrational reason of indigency.

B. There is no rational relationship between conviction of violent felonies and responsible exercise of the franchise.

Similarly, there is no rational relationship between the nature of convicted crimes and responsible exercise of franchise. § 67-91(C)(2) singles out violent felons for additional financial requirements while imposing none on non-violent felons. § 67-91. Upholding § 67-91(C)(2) requires this Court to recognize that non-violent felons are more responsible voters than violent felons. This is a false premise. If committing a felony reflects a disregard for the law, that is true for both violent and non-violent felonies. Non-violent felonies are nevertheless so harmful to society as to be classified as felonies. As concerned legislators pointed out, non-violent felonies such as massive fraud conspiracies can have widespread and devastating effects, “costing [the] state and its people millions.” J.A. 4.

Furthermore, § 67-91(C)(2) plainly does not further Marshall’s interest in having a responsible electorate. In fact, § 67-91(C)(2) prevents Marshall from achieving so. As discussed in Section I, *supra*, felons in Marshall have no reasonable way of ascertaining whether they committed violent or non-violent felonies. The lack of notice, combined with the steep price of violation, deter an overwhelming majority of felons from voting altogether. But felons deterred from voting are precisely those who, according to Marshall, make responsible voters: they have high regard for the law and would rather forego voting than risk committing voter fraud. While rational basis does not require narrow tailoring, the defects of § 67-91(C)(2) goes beyond mere overbreadth or under-inclusivity. It defeats the very purpose it sets out to accomplish. Rational basis calls for judicial deference so long as a statute achieves, to some extent, a legitimate purpose. *Beach Commc’ns, Inc.*, 508 U.S. at 313. A statute that prevents the achievement of its own purpose is *antithetical* to having a rational basis and does not warrant judicial deference by this Court.

Lastly, Marshall’s interest in having an electorate it deems fit does not require the exclusion

of felons at all. Marshall's proffered interests speculates on felons' moral fitness to participate in the democratic process. But felons in Marshall do participate in the democratic process: they run for public office. J.A. 2. If felons are fit to represent the will of people in lawmaking, there is no rational speculation that justifies excluding them from voting. No rational basis proffered by Marshall can reconcile the contradiction of allowing felons to run for public office yet denying them the right to vote. There is no conceivable set of facts that could provide a rational basis for the classifications here. Judicial deference to the legislature does not counsel this Court to uphold a statute that lacks *any* reasonable basis. *Romer v. Evans*, 517 U.S. 620, 635 (1996).

In conclusion, this Court should find § 67-91(C)(2) in violation of the Equal Protection Clause, for it impermissibly discriminates on wealth in the availability of voting rights.

### **Conclusion**

For the aforementioned reasons, the Thirteenth Circuit's grant of summary judgment must be affirmed.

**Applicant Details**

First Name	David
Middle Initial	B
Last Name	Liss
Citizenship Status	U. S. Citizen
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Contact Phone Number	7065776074

**Applicant Education**

BA/BS From	University of Georgia
Date of BA/BS	May 2019
JD/LLB From	The George Washington University Law School <a href="https://www.law.gwu.edu/">https://www.law.gwu.edu/</a>
Date of JD/LLB	May 20, 2023
Class Rank	25%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships	Yes
----------------------------------	-----

Post-graduate Judicial Law Clerk **Yes**

### **Specialized Work Experience**

### **Recommenders**

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2026161509

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**David B. Liss**

1221 24<sup>th</sup> St. NW, Apt. 904 · Washington, D.C. 20037 · (706) 577-6074 · David\_liss@law.gwu.edu

June 14, 2023

The Honorable Jamar K. Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510

Dear Judge Walker:

I am a recent graduate of The George Washington University Law School. I am writing to apply for a 2024-25 term clerkship in your chambers. I am interested in criminal law and aspire to become a federal prosecutor focusing on cybersecurity. After I take the bar exam this summer, I will serve as a judicial law clerk for The Honorable James A. Crowell IV at the Superior Court of the District of Columbia. I believe this experience will make me a desirable candidate for this position.

Enclosed please find my resume, transcript, and writing sample. The writing sample is a Report and Recommendation I wrote while serving as an intern for The Honorable M. Stephen Hyles, Magistrate Judge for the Middle District of Georgia, Columbus Division. This sample evaluates a prisoner's motion to vacate his sentence based on ineffective assistance of counsel.

If you have any questions, please feel free to contact me at the above address and telephone. Thank you for your time and for considering my application.

Respectfully,

*David B. Liss*

David B. Liss

## David B. Liss

1221 24<sup>th</sup> St. NW, Apt. 904 | Washington, D.C. 20037 | (706) 577-6074 | David\_Liss@law.gwu.edu

### EDUCATION

#### **The George Washington University Law School**

Washington, D.C.

*Juris Doctor, cum laude*

May 2023

GPA: 3.63

JD Rank: 117/526 (22%)

Concentration: National Security and Cybersecurity Law

Honors: President's Volunteer Service Award, GW Law Pro Bono Recognition (Gold Award: 685.5 hours)

Thurgood Marshall Scholar

Dean's Recognition for Professional Development

Activities: Dean's Fellow (2021-2023)

#### **The University of Georgia**

Athens, GA

*Artium Baccalaureus, magna cum laude, in Classical Culture*

May 2019

*Artium Baccalaureus, magna cum laude, in International Affairs*

May 2019

GPA: 3.75

Minor: Italian

Study Abroad: IES Rome: Language and Area Studies Program (Sept. 2017 – May 2018)

### EXPERIENCE

#### **Superior Court of the District of Columbia**

Washington, D.C.

*The Honorable James A. Crowell IV*

Sept. 2023 – Sept. 2024

*Judicial Law Clerk*

- Will begin my clerkship for Judge Crowell in September 2023

#### **United States District Court for the Middle District of Georgia, Columbus Division**

Columbus, GA

*The Honorable M. Stephen Hyles, Magistrate Judge*

May 2023 – June 2023

*Legal Intern*

- Wrote several legal memoranda and a Report and Recommendation on a motion to vacate sentencing for ineffective assistance of counsel
- Attended court proceedings, including a criminal trial for a doctor accused of killing his patients

#### **United States Attorney's Office for the District of Columbia, Criminal Division**

Washington, D.C.

*Fraud, Public Corruption, and Civil Rights Section*

Jan. 2023 – April 2023

*Legal Intern*

- Aided in ongoing criminal investigations and attended court proceedings
- Researched and wrote motions for ongoing litigation, such as a response to a severance motion

#### **U.S. Department of Justice, Criminal Division**

Washington, D.C.

*Computer Crimes and Intellectual Property Section*

Sept. 2022 – Dec. 2022

*Legal Intern*

- Researched and drafted on issues such as the authentication of digital evidence, corporate attorney-client privilege, and the statutory requirements for the return of pre-indictment seized materials
- Attended trainings on subjects like the requirements of the Electronic Communications Privacy Act

#### **U.S. Department of Justice, Office of the General Counsel**

Falls Church, VA

*Executive Office for Immigration Review*

June 2022 – Aug. 2022

*Legal Intern – Summer Law Intern Program*

- Reviewed and redacted documents in response to requests through the Freedom of Information Act, conducted Initial Privacy Assessments, and reviewed attorney discipline cases from Immigration Court

#### **Department of Homeland Security, Immigration and Customs Enforcement**

Washington, D.C.

*Office of the Principal Legal Advisor*

Sept. 2021- Dec. 2021

*Law Clerk*

- First chaired an asylum case and wrote two appellate briefs

#### **Immigration and Customs Enforcement, Office of the Principal Legal Advisor**

Washington, D.C.

*Homeland Security Investigations Law Division*

May 2021 – Aug. 2021

*Law Clerk*

- Researched legal areas related to the Fourth Amendment, Cultural Property, and Asset Forfeiture



## THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G45768254

Date of Birth: 16-JUL

Date Issued: 01-JUN-2023

Record of: David B Liss

Page: 1

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Issued To: DAVID LISS

REFNUM:5169509

Admit Term: Fall 2020

DAVID\_LISS@LAW.GWU.EDU

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Current Major(s): Law

Concentration(s): NatSecurity&amp; CybersecurityLaw

Degree Awarded: J D 21-MAY-2023

With Honors

Major: Law

Area of Concentration: NatSecurity&amp; CybersecurityLaw

JD RANK: 117/526

SUBJ NO COURSE TITLE CRDT GRD PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2020

Law School

Law

LAW 6202 Contracts 4.00 B+

LAW 6206 Torts 4.00 B+

LAW 6212 Civil Procedure 4.00 B

LAW 6216 Fundamentals Of 3.00 B

Lawyer I

Collins

Ehrs 15.00 GPA-Hrs 15.00 GPA 3.178

CUM 15.00 GPA-Hrs 15.00 GPA 3.178

Spring 2021

Law School

Law

LAW 6208 Property 4.00 A-

LAW 6209 Legislation And 3.00 A

LAW 6210 Criminal Law 3.00 A-

LAW 6214 Constitutional Law I 3.00 B

LAW 6217 Fundamentals Of 3.00 A-

Lawyer II

Collins

Ehrs 16.00 GPA-Hrs 16.00 GPA 3.604

CUM 31.00 GPA-Hrs 31.00 GPA 3.398

Good Standing

DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO COURSE TITLE CRDT GRD PTS

Fall 2021

Law School

Law

LAW 6360 Criminal Procedure 3.00 A+

LAW 6666 Research And Writing 2.00 CR

LAW 6668 Field Placement 2.00 CR

LAW 6671 Government Lawyering 2.00 A

LAW 6870 National Security Law 3.00 A+

LAW 6886 Domestic Terrorism 2.00 A-

Brzozowski

Ehrs 14.00 GPA-Hrs 10.00 GPA 4.133

CUM 45.00 GPA-Hrs 41.00 GPA 3.577

THURGOOD MARSHALL SCHOLAR

TOP 16% - 35% OF THE CLASS TO DATE

Spring 2022

LAW 6218 Professional 2.00 A-

LAW 6230 Responsibility/Ethic 3.00 A+

LAW 6268 Evidence 3.00 B+

LAW 6666 Research And Writing 2.00 CR

LAW 6879 Cybersecurity Law And 2.00 B-

LAW 6884 Tech Foundations For 1.00 CR

Clark

Ehrs 13.00 GPA-Hrs 10.00 GPA 3.567

CUM 58.00 GPA-Hrs 51.00 GPA 3.575

Good Standing

THURGOOD MARSHALL SCHOLAR

TOP 16% - 35% OF THE CLASS TO DATE

\*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*



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Interim University Registrar

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Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD	PTS
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Fall 2022

LAW 6369	Computer Crimes	2.00	A	
LAW 6380	Dickey Constitutional Law II	3.00	A	
LAW 6666	Fontana Research And Writing	2.00	CR	
LAW 6667	Fellow Pont Advanced Field Placement	0.00	CR	
LAW 6668	Buatte Field Placement	4.00	CR	
LAW 6683	Mccoey College Of Trial Advocacy	3.00	A	
	Saltzburg			
Ehrs	14.00	GPA-Hrs	8.00	GPA 4.000
CUM	72.00	GPA-Hrs	59.00	GPA 3.633
Good Standing				
THURGOOD MARSHALL SCHOLAR				
TOP 16%-35% OF THE CLASS TO DATE				

Spring 2023

Law School				
Law				
NatSecurity& CybersecurityLaw				
LAW 6250	Corporations	4.00	B+	
LAW 6497	Selected Topics In Ip Law	2.00	A	
LAW 6666	Research And Writing	2.00	CR	
LAW 6667	Fellow Advanced Field Placement	0.00	CR	
LAW 6668	Field Placement	2.00	CR	
LAW 6893	Disinfo, Natsec, & Cybersec	2.00	A	
Ehrs	12.00	GPA-Hrs	8.00	GPA 3.667
CUM	84.00	GPA-Hrs	67.00	GPA 3.637
Good Standing				

\*\*\*\*\* TRANSCRIPT TOTALS \*\*\*\*\*

	Earned Hrs	GPA Hrs	Points	GPA
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TOTAL INSTITUTION	84.00	67.00	243.67	3.637
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OVERALL	84.00	67.00	243.67	3.637
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*Katie Cloud*  
Katie Cloud  
Interim University Registrar

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1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
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The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and

School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

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CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt, CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

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# UNIVERSITY OF GEORGIA

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## STUDENT ACADEMIC RECORD

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*Fiona Liken*  
FIONA LIKEN  
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH 16-JUL	STUDENT NAME David Benjamin Liss	
DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
See program information below.		
SPECIAL REQUIREMENTS ➔	REGENTS EXAM	HISTORY
	ESSAY OK	READING OK
	CONSTITUTION	PHYSICAL EDUCATION
	FEDERAL OK	GA. OK
DATE PRINTED: 08-JUN-2021 PAGE NO.: 1 TRANSCRIPT CONTROL NUMBER: DocumentID: 34651362 ISSUED TO: David Liss		

Course Level: Undergraduate				SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Program				Transfer Information continued:			
Bachelor of Arts				Ehrs:	3.00 GPA-Hrs:	0.00 QPts:	0.00 GPA: 0.00
College : School of Pub and Intl Aff				Summer 2016 College Board AP			
Major : International Affairs				ARHI 2GTS	Gen Ed Core Test Score Credit	3.00 K	
Minor : Italian				LATN 1001	Elementary Latin I	4.00 K	
Secondary				Ehrs:	7.00 GPA-Hrs:	0.00 QPts:	0.00 GPA: 0.00
Bachelor of Arts				Summer 2016 Columbus State U			
College : College of Arts and Sciences				STAT 2000	Intro Statistics	3.00 A	
Major : Classical Culture				Ehrs:	3.00 GPA-Hrs:	3.00 QPts:	12.00 GPA: 4.00
Minor : Italian				Fall 2017 U Rochester			
Degrees Awarded Bachelor of Arts 10-MAY-2019				CLAS 3TXX	Transfer Elective	3.00 A	
Primary Degree				INTL 3TXX	Transfer Elective	3.00 A	I
College : College of Arts and Sciences				INTL 3TXX	Transfer Elective	3.00 A	I
Major : Classical Culture				ITAL 3010	Ita Conversa and Comp	3.00 A	
Minor : Italian				ITAL 3TXX	Transfer Elective	1.00 A	
Inst. Honors: Magna Cum Laude				POLS 4TXX	Transfer Elective	3.00 A	
Degrees Awarded Bachelor of Arts 10-MAY-2019				Ehrs:	16.00 GPA-Hrs:	16.00 QPts:	64.00 GPA: 4.00
Primary Degree				Spring 2018 U Rochester			
College : School of Pub and Intl Aff				INTL 3TXX	Transfer Elective	3.00 A	I
Major : International Affairs				INTL 3TXX	Transfer Elective	3.00 A	I
Minor : Italian				INTL 4TXX	Transfer Elective	3.00 A	
Inst. Honors: Magna Cum Laude				ITAL 2030	Practical Italian Conversation	1.00 B	
SUBJ NO. COURSE TITLE CRED GRD PTS R				ITAL 4090	Internship in Italy	3.00 B	I
TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:				ITAL 4120	Topics in Italian	3.00 B	I
Fall 2014 College Board AP				Ehrs:	16.00 GPA-Hrs:	16.00 QPts:	57.00 GPA: 3.56
ARHI 2GXX Gen Ed Core Elective				INSTITUTION CREDIT:			
ENGL 1101 English Comp I				Summer 2015			
HIST 2111 Am History to 1865				SOCI 1101	Intro Sociology	3.00 B+	9.90
HIST 2701 World Civ I				A UNIV 1102	Learning to Learn	3.00 A	12.00
LATN 1002 Elementary Latin II				***** CONTINUED ON PAGE 2 *****			
LATN 2001 Intermediate Latin							
Ehrs: 16.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00							
Summer 2015 College Board AP							
ECON 2105 Prin of Macroecon							
***** CONTINUED ON NEXT COLUMN *****							



# UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR  
ATHENS, GEORGIA 30602-6113

## STUDENT ACADEMIC RECORD

THIS OFFICIAL TRANSCRIPT IS PRINTED ON SECURITY PAPER AND DOES NOT REQUIRE A RAISED SEAL

*Fiona Liken*  
FIONA LIKEN  
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH	STUDENT NAME		DATE PRINTED	PAGE NO.	TRANSCRIPT CONTROL NUMBER
16-JUL	David Benjamin Liss		08-JUN-2021	2	DocumentID: 34651362
DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR	ISSUED TO:		
See program information below.					
SPECIAL REQUIREMENTS ➔	REGENTS EXAM		HISTORY	CONSTITUTION	
	ESSAY	READING		FEDERAL	GA.
	OK	OK	OK	OK	OK
			PHYSICAL EDUCATION		
			OK		

SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R	SUBJ NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						Institution Information continued:					
Ehrs: 6.00 GPA-Hrs: 6.00 QPts: 21.90 GPA: 3.65						Spring 2017					
Dean's List						ARHI 3004 Roman Art and Arch 3.00 A 12.00					
Good Standing						CLAS 4329 Studies Anc Hist 3.00 A 12.00					
Fall 2015						INTL 1100 Introduction to Global Issues 3.00 A 12.00					
CLAS 1000	Greek Culture	3.00	A-	11.10		ITAL 4010	Adv Conversa and Comp	3.00	A	12.00	
FYOS 1001	First Year Odyssey	1.00	A	4.00		POLS 2000	Intro to Political Science	3.00	A	12.00	
ITAL 1001	Elementary Italian	4.00	B	12.00		Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 60.00 GPA: 4.00					
LATN 2001	Intermediate Latin	3.00	B-	8.10	I	Presidential Scholar					
PEDB 1260	Softball	1.00	S	0.00		Good Standing					
Ehrs: 12.00 GPA-Hrs: 11.00 QPts: 35.20 GPA: 3.20						Summer 2017					
Good Standing						INTL 3200 Intro to Intl Rel 3.00 B- 8.10					
Spring 2016						LATN 4220 Ovid 3.00 A 12.00					
ANTH 2002	Tombs and Temples	3.00	A	12.00		LATN 4310	Livy	3.00	B+	9.90	
CLAS 1010	Roman Culture	3.00	A	12.00		Ehrs: 9.00 GPA-Hrs: 9.00 QPts: 30.00 GPA: 3.33					
ITAL 1002	Elementary Italian	4.00	A-	14.80		Good Standing					
LATN 2002	Golden Age Lat Lit	3.00	B	9.00		Summer 2018					
Ehrs: 13.00 GPA-Hrs: 13.00 QPts: 47.80 GPA: 3.67						ECOL 1000E Ecological Basis Environ Issue 3.00 A 12.00					
Good Standing						ECOL 1000L Environ Issues Lab 1.00 A 4.00					
Summer 2016						INTL 3300 Intro to Comp Pol 3.00 A 12.00					
ITAL 2001E	Intermediate Italian	3.00	A	12.00		Ehrs: 7.00 GPA-Hrs: 7.00 QPts: 28.00 GPA: 4.00					
MATH 1101	Intro Math Modeling	3.00	A	12.00		Dean's List					
Ehrs: 6.00 GPA-Hrs: 6.00 QPts: 24.00 GPA: 4.00						Good Standing					
Dean's List						Fall 2018					
Good Standing						CLAS 4380 Death Antiquity and Its Legacy 3.00 A 12.00					
Fall 2016						CLAS 4410 Rhetoric and Democracy 3.00 A 12.00					
CLAS 4100	Anc Roman Cities	3.00	A	12.00		INTL 4210	Intl Law	3.00	A-	11.10	
CLAS 4160	Late Antiquity	3.00	A	12.00		ITAL 4120	Topics in Italian	3.00	A	12.00	I
ITAL 2002	Intermediate Italian	3.00	B+	9.90		MUSI 2060	History Analysis Rock Music	3.00	A	12.00	
POLS 1101	American Government	3.00	A	12.00		Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 59.10 GPA: 3.94					
Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 45.90 GPA: 3.82						Dean's List					
Good Standing						Good Standing					
***** CONTINUED ON NEXT COLUMN *****											
Spring 2019											
ENGL 1102 English Comp II 3.00 A 12.00											
***** CONTINUED ON PAGE 3 *****											



UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR  
ATHENS, GEORGIA 30602-6113

STUDENT ACADEMIC RECORD

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*Fiona Liken*  
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MONTH AND DAY OF BIRTH	STUDENT NAME
16-JUL	David Benjamin Liss

DATE PRINTED	PAGE NO.	TRANSCRIPT CONTROL NUMBER
08-JUN-2021	3	DocumentID: 34651362

DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
See program information below.		

SPECIAL REQUIREMENTS →	REGENTS EXAM		HISTORY	CONSTITUTION		PHYSICAL EDUCATION
	ESSAY	READING		FEDERAL	GA.	
	OK	OK	OK	OK	OK	OK

ISSUED TO:
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SUBJ NO.	COURSE TITLE		CRED GRD	PTS R
Institution Information continued:				
GEOG 1112	Intro to Weather and Climate		3.00 A-	11.10
INTL 4250	Amer Foreign Policy		3.00 A-	11.10
INTL 4265	Global Simulation		3.00 B+	9.90
INTL 4390	European Politics		3.00 A-	11.10
Ehrs: 15.00 GPA-Hrs: 15.00		QPts: 55.20	GPA: 3.68	
Dean's List				
Good Standing				
***** TRANSCRIPT TOTALS *****				
	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	110.00	109.00	407.10	3.73
TOTAL TRANSFER	61.00	35.00	133.00	3.80
OVERALL	171.00	144.00	540.10	3.75
***** END OF TRANSCRIPT *****				

## UNIVERSITY OF GEORGIA

### Office of the Registrar

### Transcript Guide

#### Accreditation

The University of Georgia is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award baccalaureate, master's, specialist, and doctoral degrees. Contact the Southern Association of Colleges and Schools Commission on Colleges at 1866 Southern Lane, Decatur, GA 30033-4097 or call 404-679-4500 for questions about the accreditation of the University of Georgia. In addition, many UGA programs are specifically accredited by appropriate professional certifying agencies.

#### Course Numbering

Semester	Quarter	
0001-0999	001-099	Non-Credit, Academic Enhancement
1000-2999	100-299	Undergraduate, Lower Division
3000-5999	300-599	Undergraduate, Upper Division
6000-9999	600-999	Graduate

Professional courses may include course numbers 3000 and above.

#### Repeat Course Code Definitions

- A Included in GPA and attempted credit hours
- E Excluded from GPA, attempted, and earned credit hours
- I Included in GPA, attempted, and earned credit hours

#### Course Suffixes

- D - Non-Credit Discussion Group
- E - Online Learning Course
- H - Honors Course
- I - Integrated Learning Course
- L - Laboratory Course
- S - Service Learning Course
- W - Writing Intensive Course

#### Grading Scales

Effective summer 2006, the University of Georgia uses a plus/minus grading scale.

Grades	Quality Points per Credit Hour
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D	1.0
F	0.0

From fall 1969 to spring 2006, the University did not use a plus/minus grading scale.

#### School of Law Grading Scale

Grades	Quality Points per Credit Hour
A+	4.3
A	4.0
A-	3.7
B+	3.3
B	3.0
B-	2.7
C+	2.3
C	2.0
C-	1.7
D+	1.3
D	1.0
F	0.0

#### Other Grading Marks

- AU Audit prior to summer 1976.
- I Incomplete for A-F graded course: Doing satisfactory work but unable to complete course by deadline for reason beyond student's control.
- I\* Incomplete for Satisfactory/Unsatisfactory graded course: Doing satisfactory work but unable to complete course by deadline for reason beyond student's control.
- K Credit by examination effective summer 1976.
- NG No grade reported by instructor at the time of grade processing effective fall 2014.
- NR No grade reported by instructor at the time of grade processing prior to fall 2014.
- S Satisfactory in a Satisfactory/Unsatisfactory graded course.
- U Unsatisfactory in a Satisfactory/Unsatisfactory graded course.
- V Audit effective summer 1976.
- W Withdrawn: Permitted to withdraw from a course without academic penalty. In effect prior to fall 2008 and after fall 2014.
- WF Withdrawn/Failing: Counts as an F in the GPA. Prior to fall 2008: Unsatisfactory work at the time of withdrawal. Effective fall 2008 through summer 2014: Unsatisfactory work at the time of withdrawal or exceeded maximum limit of four W or WP grades.
- WM Military Withdrawal: Involuntary activation.
- WP Withdrawn/Passing: Permitted to withdraw from a course without academic penalty. In effect fall 2008 through summer 2014.
- WU Withdrawn/Unsatisfactory from a Satisfactory/Unsatisfactory graded course.

#### Attempted Courses Policy

All courses attempted by a student will be included on the student's transcript, including UGA courses from which the student withdrew and received no hourly credit and courses transferred to the University from another accredited institution.

#### Re-Enrollment Policy

A student is academically eligible to re-enroll at the University unless otherwise noted on the student's transcript.

#### Academic Calendar

As of fall 1998, the University of Georgia defines an academic year as comprised of three semesters: fall, spring, and summer. Prior to fall 1998, the University of Georgia operated on the quarter system.

#### For Additional Information, Contact:

Office of the Registrar  
University of Georgia (FICE Code: 001598)  
Holmes/Hunter Academic Building  
Athens, GA 30602-6113  
Phone: 706-542-4040  
Office of the Registrar Website: [www.reg.uga.edu](http://www.reg.uga.edu)  
University of Georgia Website: [www.uga.edu](http://www.uga.edu)

In accordance with U.S.C. 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974), you are hereby notified that this information is provided upon the condition that you, your agents, or employees will not permit any other party access to this record without consent of the student. Alteration of this transcript may be a criminal offense (Rooker, et, al, 2012, p. 133.).

Transcript guide modified November 2018.

**To Test for Authenticity of Official Paper Transcript:** The face of this document has a red background and the seal of the institution appears in small print. When photocopied in color or black and white, the word COPY appears prominently across the face of the entire document.

**Alteration or forgery of this document may be a criminal offense.** A black and white document is not an original and should not be accepted as an official institutional document.

**To Test for Authenticity of PDF Transcript:** The electronic version of the official transcript of the University of Georgia contains a digital signature that can be instantly validated. The document will display a blue ribbon symbol as assurance that the digital signature is valid, authentic, and the contents of the document have not been altered. If you have additional questions about this document, please contact the Office of the Registrar at 706-542-4040.



The George Washington University Law School  
2000 H Street NW  
Washington, DC 20052

June 14, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write to you on behalf of David Liss, who has applied for a clerkship with you following his graduation from The George Washington University Law School in May 2023. David was a student in my small-section Civil Procedure course (40 students) during his first semester at GW Law. I have gotten to know David quite well from his frequent participation in class, conversations with him outside of class, and his participation in the Inns of Court Program, for which I am a faculty advisor in the Cardozo Inn. David has worked hard to become an exceptional law student, and I am confident that he would be an outstanding law clerk.

You can see how much David has grown as a law student by looking at his transcript. He began well, but not at the top of his class. Notwithstanding some initial uncertainty about how to make and evaluate legal arguments, David displayed a remarkable commitment to self-directed learning during his first semester in my Civil Procedure class. He responded very well to difficult Socratic questioning in class. His first semester exams showed that he was still in the process of absorbing the different analytical methods that we teach in law school. To his great credit, he sought frequent feedback and my strong belief was that he would significantly improve during his second semester. My prediction, based on my many interactions with David and his clear commitment to excel, turned out to be correct. David's GPA went from 3.2 in the first semester to 3.6 for the second semester and 4.1 for his third semester. This was not an accident but the result of David's committed efforts to apply his considerable intellect to the development of the very specific kinds of analytical skills necessary to excel as a lawyer. Some law students enter law school with these skills already well in hand. I have much more admiration for those who start out with challenges and, through their determination and grit, become the kind of brilliant legal analyst that David so clearly now has become.

David is not just an academic superstar; he also worked hard to acquire the non-cognitive skills that are so important in the legal profession. David received the Dean's Recognition for Professional Development. In order to receive this award, students must complete, on their own initiative, a variety of activities that will help them acquire the full range of skills necessary to become a successful lawyer. David understands how important it is for a young lawyer to take charge of his own professional development, and he has worked hard to become a complete lawyer. There are plenty of academically brilliant law students who fail to grasp how necessary it is to go beyond the 1L classroom to work on the non-cognitive skills that are essential in the legal workplace. David really appreciates that getting A's in the classroom is not enough, and he has the self-direction to acquire the entire complement of legal skills.

Finally, David is also a terrifically nice person. He is well regarded by the faculty and his peers. I have no doubt that he will continue to grow and develop as a young lawyer and that he will become an alumnus of whom GW Law will be exceptionally proud. I recommend him to you with the greatest enthusiasm.

Sincerely,

Todd David Peterson  
Professor of Law and  
Carville Dickinson Benson Research Professor  
(202) 994-1004  
tpeter@law.gwu.edu

Todd Peterson - tpeter@law.gwu.edu - (703) 768-5813



SUPERIOR COURT OF DEKALB COUNTY

DEKALB COUNTY COURTHOUSE  
556 N. McDONOUGH STREET, SUITE 6240  
DECATUR, GEORGIA 30030

CHAMBERS OF  
STACEY K. HYDRICK

TELEPHONE (404) 371-2691  
FACSIMILE (404) 371-3044  
shydrick@dekalbcountyga.gov

September 22, 2022

Re: Letter of Recommendation for David Liss

To Whom It May Concern:

I am honored to recommend David Liss for a Federal Clerkship position. I have known David for the past eight years. He and my son have been friends since their freshman year of college and roommates their senior year. Just before their senior year, there was an issue with the apartment the boys leased, which David and I had to handle while my son was out of town. David was in Athens and immediately jumped in to help resolve the problem by researching the Athens/Clarke County housing code, formulating logical and well thought out legal arguments, and communicating his findings to the appropriate entities. To say I was impressed is an understatement. I wish I saw the same level of determination, commitment, and attention to detail from more of the attorneys that appear before me every day.

David is also one of the most intelligent, hardworking, and motivated young men I have met. He currently has a 3.577 GPA at The George Washington University Law School, was named a Thurgood Marshall Scholar and received the Dean's Recognition for Professional Development. He has worked with the Department of Homeland Security since May of last year and is a Dean's Fellow (teaching assistant). In addition to his studies, David knows the importance of giving back. He has volunteered for various community service organizations, including The Backpack Project, Food 2 Kids, and Relay For Life.

David is smart, determined, and is a natural leader. He demonstrates true initiative and a real desire to learn. Given his stellar academic credentials and his proven problem-solving skills, I know David will be an outstanding lawyer and a credit to any Judge who is lucky enough to work with him. If you have any questions about David or his qualifications, please contact me anytime.

Best regards,

The Honorable Stacey K. Hydrick  
Judge, DeKalb County Superior Court

The George Washington University Law School  
2000 H Street NW  
Washington, DC 20052

June 14, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend David Liss for a clerkship in your chambers. David is a remarkably focused and prepared student. His career goal is to be an AUSA in the DC U.S. Attorney's Office, concentrating on cybersecurity issues. He has worked out the steps that would be best to take to achieve this goal, and has correctly decided that it would be important to clerk for a judge on the DC Superior Court and a federal district judge.

I had the good fortune to teach David in my criminal procedure class in fall 2021. David immediately caught my eye with his calm, utterly prepared demeanor. He faultlessly and succinctly answered every question I asked him. He also posed questions of his own, often related to computers or cybersecurity, which were highly sophisticated and led both me and the class to a better appreciation of this important field. He also showed a deep interest and understanding of issues related to investigation of violent crime.

Given his excellent class participation, I was not surprised that he did very well on the exam. But he exceeded even my high expectations, earning an A+. His answers showed a mastery of legal doctrine and the ability to apply it to different situations. His response to a policy question was striking, again showing facility with doctrine but also a realistic appreciation for resource constraints and human motivation. He has a valuable combination of analytic ability and common sense. His writing is clear and concise.

At George Washington, David has shown himself capable of hitting the ball out of the park in multiple classes, earning a top grade of A+. He had a bit of a slow start in the first semester of his first year, which was entirely online. But he rapidly recovered and his grades are now very good. He especially enjoys classes concerning true "lawyers' law" such as criminal procedure and civil procedure. These are, of course, important in a clerkship.

Outside of class, I have greatly enjoyed speaking with David about a variety of topics. He is well-rounded and well-read. He grew up in Columbus, Georgia. As an undergraduate at the University of Georgia, he took an intense interest in classical studies, studying Latin and earning a minor in Italian. He greatly appreciates art and antiquities, and spent a year excavating archeological sites in Rome. I did not know that there was such a field as speleology, the study of caves, until he introduced me to it. Something that I find particularly engaging about him is that one of the reasons he decided to go to law school in DC was the large number of world-class museums here. He finds it incredible that he can go to a museum as superb as the National Gallery on a whim. Would that every young person had that attitude!

David is an avid guitarist, and played for a cover band in college; now he mostly plays on his own. He reads widely, including fantasy and science fiction, and more recently nonfiction and classics. Recently, he has read David Simon's *Homicide*, about the homicide unit of the Baltimore Police Department, and Miles Davis's autobiography. He would be a pleasure to work with and a great asset to your chambers.

Please do not hesitate to contact me if I may be of further assistance.

Very truly yours,

Renée Lettow Lerner  
Donald Phillip Rothschild Research Professor of Law  
George Washington University Law School  
(202) 994-5776  
rlerner@law.gwu.edu

Rene Lerner - rlerner@law.gwu.edu - (703) 528-8155

U.S. Department of Justice  
Criminal Division  
Computer Crime and Intellectual Property Section

1301 New York Avenue NW  
Washington, DC 20530  
(202) 616-1509 office  
Ryan.Dickey@usdoj.gov

June 14, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

My name is Ryan Dickey, and I write to recommend David Liss—highly and without hesitation—for a clerkship with your chambers. I have had the pleasure of both supervising and teaching David, and, based on my experience, I am confident he will serve as an excellent clerk.

I supervised David during his fall 2022 internship with my office, the Computer Crime and Intellectual Property Section, which is part of the Criminal Division of the Department of Justice. During his internship, he worked directly with federal prosecutors, myself included, on legal issues across a wide range of criminal law, both substantive and procedural, with a focus on cybercrime, intellectual property, and gathering of electronic evidence.

In a ransomware investigation, David researched how a critical piece of evidence could be authenticated under the Federal Rules of Evidence in light of the relevant law of the circuit in which the case was being investigated. In an intellectual property case, he examined whether a former principal of a corporate defendant could waive the corporation's attorney-client privilege. In both matters, David produced comprehensive analyses evaluating the relevant rules, statutes, and case law, all in light of our facts. I was impressed not only with his ability to digest large bodies of evidence and case law, but also with his capacity to incorporate and learn from constructive feedback during the drafting process.

As the semester progressed, David worked on a variety of legal issues, from aiding and abetting liability to the scope of discovery during the sentencing phase of a criminal proceeding to the appropriateness of certain conditions of supervised release in a sextortion prosecution. Throughout the semester, I received universally positive feedback from my colleagues about his thoroughly researched memorandum and his ability to work expeditiously and with little oversight. Many of my colleagues, after working with David on one project, requested his help with other matters. As his internship reached its end, he was simply inundated with assignments.

In addition to interning with my office, David was also a stand-out student in my course on computer crime law at George Washington University Law School during the fall 2022 semester. He came to every class well-prepared and ready to demonstrate a comprehensive understanding of the materials, whether we were learning about substantive computer crime law, such as the Computer Fraud and Abuse Act, or privacy laws that govern the collection of electronic evidence, such as the Stored Communications Act. David not only received one of the highest grades in the course, but I was struck by his intellectual curiosity—he routinely asked thoughtful questions and actively participated in our class discussions—all while being respectful of the other students' contributions. Any chambers would be lucky to have him as a teammate.

In my experience as a former federal district court clerk and Assistant United States Attorney, I believe David possesses all the qualities of an excellent clerk and litigator: exceptional legal acumen, professionalism, the capacity to manage a high-volume caseload, and the ability to effortlessly build rapport with colleagues. I highly recommend him for a clerkship in your chambers. If there is anything I can do to help with your selection process, please do not hesitate to contact me at ryan.dickey@usdoj.gov or (202) 616-1509. Thank you.

Kind regards,  
Ryan K.J. Dickey

Ryan Dickey - dickey@law.gwu.edu - 2026161509

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION**

JEFFREY MCBRIDE,	:	
	:	
Petitioner,	:	
	:	No. 4:20-cr-20-CDL-MSH
	:	No. 4:22-cv-00188-CDL-MSH
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
	:	

**REPORT AND RECOMMENDATION**

Pending before the Court is Petitioner Jeffrey McBride’s motion and amended motion to vacate his sentence pursuant to 28 U.S.C. § 2255 (ECF Nos. 77, 79). For the reasons stated below, it is recommended that McBride’s motion to vacate be denied.

**BACKGROUND**

On July 15, 2020, a federal grand jury returned an indictment against Petitioner, charging him with possession of firearms by a convicted felon in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2), possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A) and 18 U.S.C. § 2, and possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). Indictment 1-3, ECF No. 1. Petitioner was arrested on August 5, 2020. Arrest Warrant 1, ECF No. 11; ECF 21. On the same day, Petitioner appeared for an initial appearance via

video conference and entered a plea of not guilty. Text-only Minute Entry, ECF No. 19; Plea Sheet 1, ECF No. 32.

On December 3, 2020, the Government filed a Superseding Information, which charged Petitioner only with one count of possession of methamphetamine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Superseding Information, ECF No. 36. That same day, Petitioner signed a plea agreement and pled guilty to the Superseding Information. Plea Sheet, ECF No. 37; Plea Tr. 19, ECF No. 68; Plea Agreement, ECF No. 38. In doing so, Petitioner agreed that the Government could prove that on September 20, 2019, he possessed and intended to distribute methamphetamine with a net weight of 498.73 grams and a purity of 72% +/- 5%, resulting in 334.15 grams of pure methamphetamine. Plea Tr. 20-22; Plea Agreement 10. Additionally, the parties agreed that, during the search of the vehicle occupied by Petitioner, the Government uncovered a loaded handgun under the driver side floor mat. Plea Sheet; Plea Tr. 19; Plea Agreement 10.

Following Petitioner's guilty plea, the United States Probation Office ("USPO" or "Probation") prepared a pre-sentence report ("PSR") (ECF No. 47) using the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines"). In calculating the offense level, the USPO assigned a base level offense of 32, PSR ¶ 19, ECF No. 47, with an adjusted level of 34 due to the special offense characteristics. *Id.* ¶¶ 20, 24. After a three-level reduction for acceptance of responsibility and entering the plea in a timely manner, the final total offense level was 31. *Id.* ¶¶ 26-28. The USPO calculated a criminal history category of V and determined that Petitioner's Guidelines imprisonment range was 168-210 months. *Id.*

¶ 55. Neither party filed an objection to the PSR. PSR Addendum, ECF No. 47-1. Petitioner filed a sentencing memorandum through counsel on March 1, 2021, requesting the Court not to apply the 2-point enhancement for a firearm located in the vehicle operated by Petitioner's partner, noting that Petitioner "was arrested outside of the vehicle" and "neither had the firearm on his person nor within his reach." Sent'g Memo 1, ECF No. 48.

On March 2, 2021, the Court conducted a sentencing hearing via zoom and considered Petitioner's arguments. Sent'g Tr., ECF No. 69. Petitioner's counsel stated she was not officially objecting to the PSR in making the argument against the two-point firearm enhancement, noting it was a discretionary matter for the court. *Id.* at 6. The Court determined this was effectively an objection, *id.* at 11, and overruled it. *Id.* at 13-14. The Court sentenced Petitioner to 168 months' imprisonment, three years supervised release, and imposed a \$100 mandatory assessment. Sent'g Tr. 22-23 Judgment 2-7, ECF No. 51.

On September 23, 2021, Petitioner filed a notice of appeal (ECF No. 57). On appeal, the Eleventh Circuit affirmed Petitioner's sentence due to his appeal waiver. 11th Cir. Op. 2-4, ECF No. 73. Petitioner filed a motion to vacate his sentence (ECF No. 77) pursuant to 28 U.S.C. § 2255 on November 29, 2022, and an amended motion (ECF No. 79) on January 12, 2023. After the Court granted an extension of time to respond (ECF No. 81), Respondent filed a response on February 28, 2023 (ECF No. 83). Petitioner filed his reply on March 20, 2023 (ECF No. 84). Petitioner's motion to vacate is ripe for review.

## DISCUSSION

### I. Motion to Vacate

Petitioner's sole ground for relief in his motion to vacate is ineffective assistance of counsel. Respondent argues Petitioner's motion should be denied because Petitioner cannot meet his burden to show counsel was ineffective. The Court agrees and recommends that Petitioner's motion be denied.

A. Ineffective Assistance of Counsel

Petitioner alleges that counsel's assistance was ineffective (1) at sentencing; (2) on direct appeal; and (3) in misadvising Petitioner to plead guilty. As explained below, Petitioner fails to demonstrate ineffective assistance of counsel.

1. *Standard*

"A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984)). A petitioner's burden when bringing an ineffective assistance claim "is not insurmountable" but "is a heavy one." *Chandler v. United States*, 218 F.3d 1305, 1314 (11th Cir. 2000). To prevail on a claim of ineffective assistance of counsel, a petitioner must establish, by a preponderance of the evidence, that his attorney's performance was deficient and that he was prejudiced by the inadequate performance. *Strickland*, 466 U.S. at 687; *Chandler*, 218 F.3d at 1312-13.

To establish deficient performance, a petitioner must prove their counsel's performance "was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986). To show that counsel's performance was unreasonable, a petitioner must establish



that no competent counsel would have taken the action in question. *Van Poyck v. Fla. Dep't of Corrs.*, 290 F.3d 1318, 1322 (11th Cir. 2002) (per curiam). There is a strong presumption that the challenged action constituted sound trial strategy. *Chateloin v. Singletary*, 89 F.3d 749, 752 (11th Cir. 1996).

To satisfy the prejudice prong, a petitioner must show there is a reasonable probability that, but for counsel's inadequate representation, "the result of the proceeding would have been different." *Meeks v. Moore*, 216 F.3d 951, 960 (11th Cir. 2000) (quoting *Strickland*, 466 U.S. at 694). If a petitioner fails to establish he was prejudiced by the alleged ineffective assistance, a court need not address the performance prong of the *Strickland* test. *See Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000).

Challenges to guilty pleas based on ineffective assistance of counsel are subject to the two-part *Strickland* test. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985). A petitioner may only attack the "voluntary and intelligent character of the guilty plea." *Id.* at 56-57. A petitioner may establish deficient performance by demonstrating that counsel's advice was not within the "range of competence demanded of attorneys in criminal cases." *McMann v. Richardson*, 397 U.S. 759, 771 (1970). A petitioner must satisfy the prejudice prong by demonstrating that "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill*, 474 U.S. at 59; *see also Martin v. United States*, 949 F.3d 662, 667 (11th Cir. 2020). Further, a petitioner must also "convince the court that a decision to reject the plea bargain would have been rational under the circumstances." *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010); *see Diveroli v. United States*, 803 F.3d 1258, 1265 (11th Cir. 2015) (affirming denial of motion

to vacate because “it would not have been rational for [the petitioner] to reject his plea bargain”). Failure to establish prejudice by the petitioner does not require the Court to address the performance prong of the *Strickland* test. *See Hill*, 474 U.S. at 59; *Holladay*, 209 F.3d at 1248.

## 2. Sentencing

Petitioner raises four arguments related to his sentencing. He argues counsel did not object to (1) his status as a career offender, (2) the two-level firearm enhancement, (3) the quantity of pure methamphetamine, and (4) his criminal history points. Each argument lacks merit and is addressed, in turn, below.

### a. Career Offender Status

Petitioner first argues that because counsel did not object to his status as a career offender, he was prejudiced as to the length of his sentence.<sup>1</sup> Mot. to Vacate 6-13. Although the Government did assert at the change of plea hearing that Petitioner qualified as a career offender for purposes of sentencing, Plea Tr. 23, the USPO determined, after investigation, that Petitioner did not qualify for that status. PSR ¶ 40. The Government did not object to the PSR, nor did they object at the sentencing hearing. PSR Addendum; Sent’g Tr. 5-6. The Court agreed with the PSR and calculated Petitioner’s guideline range under criminal history Category V. *See Minute Sheet*, ECF No. 49; Sent’g Tr. 22. Thus, Petitioner’s argument lacks merit, because he was not sentenced as a career offender. *See id.* Counsel has no duty to raise a meritless argument. *See Strickland*, 466 U.S. at 687-91;

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<sup>1</sup> Career offender status pursuant to U.S.S.G. §4b1.1 carries greater penalties for defendants, as their guideline range is automatically moved to the highest criminal history category of VI.

*see also Denson v. United States*, 804 F.3d 1339, 1342 (11th Cir. 2015). Accordingly, counsel was not ineffective as to this issue.

b. Firearm Enhancement

Petitioner next argues that, had counsel objected to the two-level firearm enhancement at sentencing, he would not have received this enhancement.<sup>2</sup> Mot. to Vacate 20-22; *see* U.S.S.G. §2d1.1(b)(1). Although counsel did not object to the enhancement in the PSR, she did object at the sentencing hearing. Sent’g Tr. 6. Counsel articulated several arguments as to why the enhancement should not apply and preserved the argument for appeal. *Id.* at 6-14. The District Judge overruled the objection, stating, “I’m unable to conclude that it’s clearly improbable that the gun was connected to the drug offense.” *Id.* at 13-14. Petitioner’s argument lacks merit because counsel did, in fact, object to the enhancement. Sent’g Tr. 13-14; *see, e.g., Cruz v. United States*, No. W-99-CR-013, 2005 WL 8159510, at \*2 (W.D. Tx. Nov. 1, 2005) (denying ineffective assistance of counsel claim on failure to object because counsel did object and was overruled). Thus, counsel was not ineffective as to this issue.

c. Quantity of Actual Methamphetamine

Petitioner next argues that counsel should have objected to the PSR’s calculation of actual methamphetamine because he should have been sentenced for a mixture as opposed to actual methamphetamine. Mot. to Vacate 13-20; Am. Mot. 2-4. For purposes of

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<sup>2</sup> This enhancement applies when a defendant convicted of a drug trafficking offense is found to have possessed a dangerous weapon, *see* U.S.S.G. §2D1.1(b)(1), unless it is “clearly improbable that the weapon was connected with the offense.” *Id.* at n.(11)(A). In this case, the enhancement moved Petitioner’s base level offense from 29 to 31. Sent’g Tr. 13.

sentencing, methamphetamine is quantified based on purity or weight—whichever results in the greater sentence. *See* U.S.S.G. §2D1.1(c), n. B; *see also United States v. Baez Perez*, 515 F. App'x. 866, 867-68 (11th Cir. 2013) (per curiam). A quantity of actual methamphetamine between 150-500 grams results in a base offense level of 32. *See* U.S.S.G. §2D1.1(c)(4). Petitioner stipulated in the plea agreement that he possessed and intended to distribute methamphetamine with a net weight of 498.73 grams and a purity of 72% +/- 5%, resulting in 334.15 grams of actual methamphetamine. Plea Tr. 20-22; Plea Agreement 10. The PSR concluded the purity of the methamphetamine was 72%, resulting in 359.08 grams of actual methamphetamine. PSR ¶ 12. The Court used the slightly lower plea agreement number in sentencing. Sent'g Tr. 22. Regardless, both calculations are well above the threshold of 150 grams for a base offense level of 32. *See* U.S.S.G. §2D1.1(c)(4).

“When a defendant pleads guilty, his declarations under oath carry a strong presumption of truth.” *Cedeno-Gonzalez v. United States*, 757 F. App'x 868, 870 (11th Cir. 2018) (per curiam) (citing *Lee v. United States*, 137 S. Ct. 1958, 1967 (2017)). At the plea hearing, under oath, Petitioner informed the Court he had read the plea agreement and gone over it with counsel, confirmed he had signed the agreement and the attached statement, and stated he was entering into the plea freely and voluntarily. Plea Tr. 7-24. Petitioner further agreed he was completely satisfied with the advice and representation of his counsel. *Id.* at 13. Based on Petitioner's desire to plead guilty, counsel was reasonable in not objecting to the quantity of methamphetamine. *See Strickland*, 466 U.S. at 690-91.

To the extent that Petitioner asserts counsel was ineffective for not objecting to the calculation of methamphetamine, he has failed to demonstrate prejudice. *See id.* at 694. Petitioner states he wanted counsel to raise certain policy arguments against the drug weight calculation. Mot. to Vacate 13-14. Counsel could have raised these arguments in an objection, but Petitioner fails to demonstrate that there is a reasonable probability of a different or more favorable outcome if she had, given the quantity of methamphetamine met the threshold amount under any calculation. *See Meeks*, 216 F.3d at 960; *see also Borbas v. United States*, No. 1:13-CR-0025-SCJ-JFK-6, 2018 WL 5984860, at \*12 (N.D. Ga. Oct. 16, 2018), *recommendation adopted*, 2018 WL 5983018, at \*1-2 (N.D. Ga. Nov. 14, 2018). There is no basis for Petitioner’s argument either in the Eleventh Circuit or in the Guidelines. *See generally Baez Perez*, 515 F. App’x. at 867-68. Accordingly, counsel was not ineffective as to this issue.

d. PSR Interview

Petitioner’s final argument related to sentencing is that counsel’s failure to appear at the PSR interview and allegedly only reviewing the PSR with him for “180-seconds” caused inaccuracies to be included in the report—namely the calculation of his criminal history points.<sup>3</sup> Mot. to Vacate 24. Although counsel indicated she would appear at the PSR interview and failed to appear, this was not a critical stage of the criminal proceedings where representation is ensured by the Sixth Amendment. *See, e.g., United States v. Simpson*, 904 F.2d 607, 611 (11th Cir. 1990). Further, when asked by the Court at the

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<sup>3</sup> Petitioner also rehashes the firearm enhancement, drug quantity, and career offender arguments in this section, but those have already been dispensed with in the preceding paragraphs.

sentencing hearing whether Petitioner had reviewed the PSR, discussed the PSR with counsel, and understood the PSR, Petitioner responded affirmatively to each question, under oath. Sent’g Tr. 5.

Petitioner alleges there were two errors in his criminal history calculation to which counsel should have objected, which would have resulted in nine criminal history points (Category IV) as opposed to twelve (Category V).<sup>4</sup> Mot. to Vacate 23-25. Relying on U.S.S.G. § 4A1.2(c)(1), Petitioner first asserts he should not have been assessed one point for a misdemeanor conviction for possession of marijuana and possession of drug related objects because he was not sentenced to more than one year of probation or at least 30 days’ imprisonment. Mot. to Vacate 23-24. Possession of marijuana and drug related objects, however, are not crimes listed in § 4A1.2(c)(1) for which that requirement applies. Thus, he was properly assessed one point for a misdemeanor offense under U.S.S.G. §4A1.1(c). Petitioner also contends he was improperly assessed two points for committing an offense while under probation pursuant to U.S.S.G. §4A1.1(d) because his probation officer had released him from probation and informed him he had satisfied the probation portion of his sentence. Mot. to Vacate 24-25; PSR ¶ 39. The record reveals Petitioner was eleven years into a 15-year sentence, PSR ¶ 36, and five years into a 7-year sentence at the time of the offense. PSR ¶ 38. There is no evidence to support Petitioner’s argument he had been released from probation. Moreover, even if the two-point addition was error, he would still have a criminal history score of ten and remain in criminal history category

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<sup>4</sup> The Category V range in the Guidelines is 10-12 points.

V. *See* U.S.S.G. Sent’g Table. Therefore, even assuming counsel was deficient, Petitioner cannot show prejudice.

### 3. *Direct Appeal*

Petitioner raises two arguments that he believes led to the dismissal of his appeal: that counsel (1) failed to communicate with him during the appeals process, which prevented counsel from including arguments he wanted raised, and (2) raised a meritless argument. Mot. to Vacate 2-6. The record reveals Petitioner timely filed his *pro se* notice of appeal (ECF No. 57), counsel was re-appointed to represent Petitioner on direct appeal (ECF 60), counsel ordered transcripts (ECF No. 63), and counsel filed a merits brief, arguing the same issue she argued at sentencing—that the 2-level firearm enhancement did not apply. Brief of Petitioner-Appellant, *United States v. McBride*, No. 21-13290-B (11th Cir. June 30, 2022). The Eleventh Circuit dismissed the appeal because of Petitioner’s knowing and voluntary appeal waiver. 11th Cir. Op. 2-4.

#### a. Non-communication and failure to raise certain arguments

Petitioner first alleges counsel failed to communicate with him regarding his appeal, resulting in her failure to include certain arguments that he wanted raised. Mot. to Vacate 2-6. Defendants have a right to counsel to aid in the direct appeal of their criminal conviction. *See Evitts v. Lucy*, 469 U.S. 387 (1985); *see also Heath v. Jones*, 941 F.2d 1126, 1130 (11th Cir. 1991). To prove ineffectiveness of counsel on direct appeal, the petitioner must prove “counsel’s performance was deficient and that his performance prejudiced the defense.” *Heath*, 941 F.2d at 1130 (citing *Strickland*, 466 U.S. at 687). To determine prejudice, the Court must perform a review of the merits of the claim to decide

whether there is a “reasonable probability of success on appeal.” *See Heath*, 941 F.2d at 1132 (citing *Cross v. United States*, 893 F.2d 1287 (11th Cir. 1990)).

Assuming, *arguendo*, that counsel’s failure to communicate constitutes deficient performance, Petitioner has failed to demonstrate prejudice, because there was not a reasonable probability of success on appeal due to the valid appeal waiver. 11th Cir. Op. 2-4; *see Heath*, 941 F.2d at 1132. Petitioner argues that had counsel included his desired arguments—those with which he had issue at sentencing—the outcome of the appeal would have been different.<sup>5</sup> Mot. to Vacate 2-6. Irrespective of the valid appeal waiver, Petitioner cannot demonstrate his desired arguments related to the quantity of drugs and status as a career offender would have had a reasonable probability of success on appeal, as both of those arguments lack merit. *See Heath*, 941 F.2d at 1132; *see also Card v. Dugger*, 911 F.2d 1494, 1520 (11th Cir. 1990) (“Counsel cannot be labeled ineffective for failing to raise issues [on appeal] which have no merit.”). Therefore, counsel was not ineffective as to this issue.

b. Raising a “meritless” argument

Petitioner’s final argument related to his direct appeal is that the 38-page brief counsel filed challenging the application of the 2-level firearm enhancement was a “meritless claim,” that even if granted, would not have gotten the petitioner any relief.” Mot. to Vacate 6. This “meritless claim,” however, is the same claim Petitioner believes counsel should have objected to at sentencing. Mot. to Vacate 21-24. Contrary to

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<sup>5</sup> Here, Petitioner refers to the already discussed issues of the drug quantity and career offender status.



Petitioner's belief, had the argument been successful, he would have had a 2-level reduction in his base offense level. *See* U.S.S.G. §2D1.1(b)(1). Counsel made a valid argument that she had preserved on appeal. Therefore, counsel was not ineffective as to this issue. *See Watkins v. United States*, 887 F. Supp. 2d 833, 849 (C.D. Ill. 2012) (determining that counsel adequately presenting an available argument on appeal and ultimately losing is not grounds for ineffective assistance of counsel).

#### 4. *Advice to Plead Guilty*

Petitioner's final argument is that counsel was ineffective in advising him to plead guilty and waive his right of appeal because she "misadvised [Petitioner] that he was a career offender," and she did not object when the Government alleged that he would qualify as a career offender at the change of plea hearing. Am. Mot. 4. Petitioner argues that these errors led to his guilty plea and allowed the Court to paint a negative picture of him as a career offender. *Id.* Aside from the fact that Petitioner was neither sentenced as a career offender, nor was considered a career offender by either the Court or Probation, nowhere in Petitioner's motion to vacate does he allege that he would not have pleaded guilty and would have insisted on going to trial. Am. Mot. 2-4; *see Hill*, 474 U.S. at 59; *see also Martin*, 949 F.3d at 667.

Further, Petitioner cannot demonstrate that it would have been rational for him to reject the plea deal under the circumstances. *See Padilla*, 559 U.S. at 372; *Diveroli*, 803 F.3d at 1265 (comparing the favorability of the plea bargain to the petitioner's sentencing exposure in the event of rejection and "near-certain conviction"). Had Petitioner elected to proceed to trial under the original indictment, he would have exposed himself to a

minimum sentence of 10 years to life under Count Three, 18 U.S.C. § 841(b)(1)(A), and a statutory mandatory minimum of 5 years as a consecutive sentence for Count Four, 18 U.S.C. §924(c)(1)(A). Indictment 2-3. The Government also notes that, if it had filed the requisite pretrial notice of qualifying convictions under 18 U.S.C. § 924(e), that would have subjected Petitioner to a statutory range of a mandatory minimum of 15 years to life imprisonment if convicted of either Counts One or Two. Resp. to Mot. to Vacate. 22, n.8; Indictment 1-2.

By pleading guilty to a single count of possession and intent to distribute methamphetamine under 21 U.S.C. § 841(b)(1)(C), Petitioner’s sentencing exposure was capped at twenty-years with a guideline range of 168-210 months due to his three-level reduction for acceptance of responsibility and guilty plea. On the contrary, if he were convicted at trial of that same offense, his Guidelines range would have been 235-293 months imprisonment without the three-level reduction. Like in *Diveroli*, the record establishes that Petitioner faced overwhelming evidence of guilt that he attempted to sell methamphetamine to a law enforcement officer. See *Diveroli*, 803 F.3d at 1265. Petitioner has failed to establish prejudice; therefore, the Court recommends this claim be denied. See *Hill*, 474 U.S. at 59.

## **II. Certificate of Appealability**

Rule 11(a) of Rules Governing Section 2255 Cases in the United States District Courts provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability may issue only if the applicant makes “a substantial showing of the denial of a constitutional

right.” 28 U.S.C. § 2253(c)(2). If a court denies a collateral motion on the merits, this standard requires a petitioner to demonstrate that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When a court denies a collateral motion on procedural grounds, this standard requires a petitioner to demonstrate that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Id.* at 478. Petitioner cannot meet either of these standards and, therefore, a certificate of appealability in this case should be denied.

### CONCLUSION

For the foregoing reasons, it is recommended that Petitioner’s motion and amended to vacate his sentence (ECF Nos. 77, 79) under 28 U.S.C. § 2255 be **DENIED**. Additionally, a certificate of appealability should be denied. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, “[a] party failing to object to a magistrate judge’s findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court’s order based on unobjected-to factual

and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 5th day of June, 2023.

/s/ Stephen Hyles  
UNITED STATES MAGISTRATE JUDGE

**Applicant Details**

First Name **Zeming**  
 Last Name **Liu**  
 Citizenship Status **U. S. Citizen**  
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**Country**  
**United States**

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**Applicant Education**

BA/BS From **Middlebury College**  
 Date of BA/BS **May 2019**  
 JD/LLB From **Columbia University School of Law**  
<http://www.law.columbia.edu>  
 Date of JD/LLB **May 20, 2024**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Columbia Journal of Transnational Law**  
 Moot Court Experience **No**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
 Externships **No**

Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Liebman, Benjamin  
bl2075@columbia.edu  
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Ponsa-Kraus, Christina  
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

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June 11, 2023

The Honorable Jamar K. Walker  
United States District Court  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student at Columbia Law School, and I write to apply for a clerkship in your chambers beginning in Aug 05, 2024.

Enclosed please find a resume, transcript, and writing sample. Also enclosed are letters of recommendation from Professors Jessica Bulman-Pozen (212 854-1028, jbulma@law.columbia.edu); Benjamin L. Liebman (212 854-0678, bliebm@law.columbia.edu), and Christina D. Ponsa-Kraus (212 854-6579, cponsa@law.columbia.edu).

Thank you for your consideration. Should you need any additional information, please do not hesitate to contact me.

Respectfully,

Zeming Liu

**ZEMING LIU**

10 City Point, Apt 41N, Brooklyn, NY 11201 • (856) 229-6666 • zl2639@columbia.edu

**EDUCATION**

**Columbia Law School**, New York, NY

J.D., expected May 2024

Honors: James Kent Scholar (2022/2023)

Harlan Fiske Stone Scholar (2021/2022)

Activities: *Columbia Journal of Transnational Law*, Financial & Technical Editor

Constitutional Law Teaching Fellow for Professor Christina Ponsa-Kraus

Research Assistant for Professor Madhav Khosla

Law and Political Economy Society, Treasurer

Society for Chinese Law, Cultural Chair

Publication: Note, *Integrating the “Socialist Core Values” into Legal Judgments: China’s New Model of Authoritarian Legality*, Colum. J. Transnat’l L. (forthcoming) (Outstanding Note Award)

**Tufts University**, Medford, MA

M.A. in Philosophy, received August 2021

Activities: Ethics Bowl

Thesis: “How Words of Others Independently Constitute My Reasons for Action”

**Middlebury College**, Middlebury, VT

B.A., *summa cum laude*, received May 2019

Majors: Philosophy (with Honors), Political Science

Activities: Symposium Global, Philosophy Club

Thesis: “Self-Representation and First-Person Authority: A Kantian Explanation of Immunity of Error through Misidentification”

**EXPERIENCE**

**United States Attorney’s Office for the Southern District of New York**, New York, NY

Fall 2023 (expected)

*Legal Extern*

**Weil, Gotshal & Manges LLP**, New York, NY

Summer 2023

*Summer Associate*

Rotate between the Litigation Department and the Restructuring Department.

**Columbia Law School**, New York, NY

*Research Assistant*

January 2022 – present

Conducted research with Professor Benjamin Liebman on judicial transparency in China, extraterritorial applicability of Chinese law, China’s litigation reduction strategy, and its official legal ideology. Reviewed court decisions and executive documents. Wrote memos.

**National Center for Law and Economic Justice**, New York, NY

*Legal Intern*

Summer 2022

Assisted with impact litigations and policy advocacy promoting economic and racial justice. Conducted legal research on civil and administrative procedures. Reviewed documents for the discovery. Designed and conducted client interviews. Drafted Title VI complaint.

**Tufts University, Department of Philosophy**, Medford, MA

*Teaching Assistant*

September 2019 – May 2021

Assisted professors in teaching undergraduate philosophy courses. Led review sessions and discussions. Graded written works with detailed commentaries. Held weekly office hours. Mentored students’ writings.

**LANGUAGES:** Mandarin (native), German (proficient)

**INTERESTS:** Classical music, European literature, soccer, basketball, hiking





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06/08/2023 02:51:47

Program: Juris Doctor

Zeming Liu

## Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L0009-1	Columbia Law/N.Y.U. Law Exchange		3.0	CR
L6241-1	Evidence	Capra, Daniel	4.0	B+
L6429-1	Federal Criminal Law	Richman, Daniel	3.0	A-
L8866-1	S. Contemporary Critical Thought II	Harcourt, Bernard E.	2.0	A-
L9128-1	S. Law and Authoritarianism [ Minor Writing Credit - Earned ]	Khosla, Madhav; Liebman, Benjamin L.	2.0	A
L6683-1	Supervised Research Paper	Liebman, Benjamin L.	1.0	A

**Total Registered Points: 15.0****Total Earned Points: 15.0**

## Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6231-2	Corporations	Goshen, Zohar	4.0	A-
L6169-1	Legislation and Regulation	Bulman-Pozen, Jessica	4.0	A
L6675-1	Major Writing Credit	Liebman, Benjamin L.	0.0	CR
L8866-1	S. Contemporary Critical Thought I	Harcourt, Bernard E.	1.0	A-
L9464-1	S. Democracy's Futures	Ahmed, Ashraf; Benhabib, Seyla	1.0	A
L6683-1	Supervised Research Paper	Liebman, Benjamin L.	2.0	A
L6822-1	Teaching Fellows	Ponsa-Kraus, Christina D.	4.0	CR

**Total Registered Points: 16.0****Total Earned Points: 16.0**

**Spring 2022**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6108-4	Criminal Law	Seo, Sarah A.	3.0	B
L6679-1	Foundation Year Moot Court		0.0	CR
L6271-1	Law and Legal Institutions in China	Liebman, Benjamin L.	3.0	A
L6121-12	Legal Practice Workshop II	McCamphill, Amy L.	1.0	P
L6116-4	Property	Merrill, Thomas W.	4.0	B+
L6118-2	Torts	Rapaczynski, Andrzej	4.0	B

**Total Registered Points: 15.0**

**Total Earned Points: 15.0**

**January 2022**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-2	Legal Methods II: Legal Theory	Purdy, Jedediah S.	1.0	CR

**Total Registered Points: 1.0**

**Total Earned Points: 1.0**

**Fall 2021**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-2	Civil Procedure	Genty, Philip M.	4.0	B+
L6133-2	Constitutional Law	Ponsa-Kraus, Christina D.	4.0	A
L6105-4	Contracts	Emens, Elizabeth F.	4.0	A
L6113-2	Legal Methods	Briffault, Richard	1.0	CR
L6115-12	Legal Practice Workshop I	McCamphill, Amy L.; Yoon, Nam Jin	2.0	P

**Total Registered Points: 15.0**

**Total Earned Points: 15.0**

**Total Registered JD Program Points: 62.0**

**Total Earned JD Program Points: 62.0**

**Honors and Prizes**

Academic Year	Honor / Prize	Award Class
2022-23	James Kent Scholar	2L
2021-22	Harlan Fiske Stone	1L



## COLUMBIA UNIVERSITY OFFICIAL TRANSCRIPT

**THIS OFFICIAL TRANSCRIPT HAS BEEN TRANSMITTED ELECTRONICALLY AND IS INTENDED SOLELY FOR THE RECIPIENT'S USE.**

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### Statement of Authenticity

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#### OFFICE OF THE UNIVERSITY REGISTRAR

1140 Amsterdam Avenue    205 Kent Hall, Mail Code 9202    New York, New York 10027    (212) 854-4400

## COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Zeming Liu  
 SSN#: XXX-XX-0344  
 SCHOOL: COLUMBIA COLLEGE (SPECIAL STUDENT)

CANDIDACY: NON-DEGREE  
 PROGRAM: VISITING STUDENT

SUBJECT	COURSE NUMBER	TITLE	POINTS	GRADE
Fall 2017				
PHIL	UN 3264	19TH CEN EUROP PHILOS: HE	3.00	A
PHIL	UN 3353	EUROPEAN SOCIAL PHILOSOPH	3.00	A-
POLS	GU 4710	QUANTITATIVE POLITICL RES	4.00	A
SOCI	UN 3009	CONTEMP SOCIOLOGICAL THEO	4.00	A+
Spring 2018				
HIST	UN 3357	HISTORY OF THE SELF: MONT	4.00	A
PHIL	UN 3251	KANT	3.00	A-
PHIL	UN 3351	PHENOMENOLOGY&EXISTENTIAL	3.00	A-
PHIL	UN 3701	ETHICS	4.00	A
PHIL	UN 3711	ETHICS-REC	0.00	
PHIL	GR 9755	PROBLEMS OF SOCIAL PHILOS	3.00	A-
Summer 2018				
PHIL	S 2201	HIST OF PHIL: AQUINAS TO	3.00	A
POLS	S 3680	TOPICS IN INTERNATIONAL S	3.00	A

This official transcript was produced on  
 SEPTEMBER 16, 2018.



SEAL OF COLUMBIA UNIVERSITY  
 IN THE CITY OF NEW YORK

*Barry S. Kane*

Barry S. Kane  
 Associate Vice President and University Registrar

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OFFICE OF THE UNIVERSITY REGISTRAR  
STUDENT SERVICE CENTER  
1140 AMSTERDAM AVENUE  
205 KENT HALL, MAIL CODE 9202  
NEW YORK, NEW YORK 10027  
(212) 854-4400



SEAL OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK

Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session  
A, B, C, D, F (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of P (pass) and HP (high pass) are used in some schools. The grade of D is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

**American Language Program, Center for Psychoanalytic Training and Research, Journalism**  
P (pass), F (failing). Grades of A, B, C, D, P (pass), F (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

**Architecture**  
HP (high pass), P (pass), LP (low pass), F (failing), and A, B, C, D, F — used June 1991 and thereafter P (pass), F (failing) — used prior to June 1991.

**Arts**  
P (pass), LP (low pass), F (fail). H (honors) used prior to June 2015.

**Business**  
H (honors), HP (high pass), P1 (pass), LP (low pass), P (unweighted pass), F (failing); plus (+) and minus (-) used for H, HP and P1 grades Summer 2010 and thereafter.

**College of Physicians and Surgeons**  
H (honors), HP (high pass), P (pass), F (failing).

**College of Dental Medicine**  
H (honors), P (pass), F (failing).

**Law**  
A through C [plus (+) and minus (-) with A and B only], CR (credit - equivalent to passing), F (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by HP (high pass), P (pass), LP (low pass), F (failing). W (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.  
E (excellent), VG (very good), G (good), P (pass), U (unsatisfactory), CR (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format — i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

**Public Health**  
A, B, C, D, F - used Summer 1985 and thereafter. H (honors), P (pass), F (failing) — used prior to Summer 1985.

**Social Work**  
E (excellent), VG (very good), G (good), MP (minimum pass), F (failing).  
A through C is used beginning with the class which entered Fall 1997. Plus signs used with B and C only, while minus signs are used with all letter grades. The grade of P (pass) is given only for select classes.

#### OTHER GRADES USED IN THE UNIVERSITY

**AB** = Excused absence from final examination.

**AR** = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

**AU** = Audit (auditing division only).

**CP** = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

**F\*** = Course dropped unofficially.

**IN** = Work Incomplete.

**MU** = Make-Up. Student has the privilege of taking a second final examination.

**R** = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

**R** = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

**R** = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

**R** = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

**UW** = Unofficial Withdrawal.

**UW** = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

**W** = Withdrew from course.

**YC** = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

#### OTHER INFORMATION

**NOTE:** All students who cross-register into other schools of the University are graded in the A, B, C, D, F grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of P (pass) and F (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

**% of A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the A (A+, A, A-) range in all classes with at least 12 grades, the mark of R excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

#### KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

The **capital letter** indicates the University school, division, or affiliate offering the course:

<b>A</b>	Graduate School of Architecture, Planning, and Preservation
<b>B</b>	School of Business
<b>BC</b>	Barnard College
<b>C</b>	Columbia College
<b>D</b>	College of Dental Medicine
<b>E</b>	School of Engineering and Applied Science
<b>F</b>	School of General Studies
<b>G</b>	Graduate School of Arts and Sciences
<b>H</b>	Reid Hall (Paris)
<b>J</b>	Graduate School of Journalism
<b>K</b>	School of Library Services/Continuing Education (effective Fall 2002)
<b>L</b>	School of Law
<b>M</b>	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytical Training and Research
<b>N</b>	School of Nursing

<b>O</b>	Other Universities or Affiliates/Auditing
<b>P</b>	School of Public Health
<b>Q</b>	Computer Technology/Applications
<b>R</b>	School of the Arts
<b>S</b>	Summer Session
<b>T</b>	School of Social Work
<b>TA-TZ</b>	Teachers College
<b>U</b>	School of International and Public Affairs
<b>V</b>	Interschool Course
<b>W</b>	Interfaculty Course
<b>Y</b>	Teachers College
<b>Z</b>	American Language Program

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The **first digit** of the course number indicates the level of the course, as follows:

<b>0</b>	Course that cannot be credited toward any degree
<b>1</b>	Undergraduate course
<b>3</b>	Undergraduate course, advanced
<b>4</b>	Graduate course open to qualified undergraduates
<b>5</b>	Graduate course open to qualified undergraduates
<b>6</b>	Graduate course
<b>7</b>	Graduate course
<b>8</b>	Graduate course, advanced
<b>9</b>	Graduate research course or seminar

**Note: Level Designations Prior to 1961:**  
1-99 Undergraduate courses  
100-299 Lower division graduate courses  
300-999 Upper division graduate courses

The term designations are as follows:  
X=Autumn Term, Y=Spring Term, S=Summer Term  
Notations at the end of a term provide documentation of the type of separation from the University.

THE ABOVE INFORMATION REFLECTS GRADING SYSTEMS IN USE SINCE SPRING 1982. THE CUMULATIVE INDEX, IF SHOWN, DOES NOT REFLECT COURSES TAKEN BEFORE SPRING OF 1982. ALL TRANSCRIPTS ISSUED FROM THIS OFFICE ARE OFFICIAL DOCUMENTS. TRANSCRIPTS ARE PRINTED ON TAMPER-PROOF PAPER, ELIMINATING THE NEED FOR SIGNATURES AND STAMPS ON THE BACK OF ENVELOPES. FOR CERTIFICATION PURPOSES, A REPRODUCED COPY OF THIS RECORD SHALL NOT BE VALID. THE HEAT-SENSITIVE STRIP, LOCATED ON THE BOTTOM EDGE OF THE FACE OF THE TRANSCRIPT, WILL CHANGE FROM BLUE TO CLEAR WHEN HEAT OR PRESSURE IS APPLIED. A BLUE SIGNATURE ALSO ACCOMPANIES THE UNIVERSITY SEAL ON THE FACE OF THE TRANSCRIPT.

# Middlebury

Record of: **Zeming Liu**

Date Issued: **14-APR-2022**

Page: **1**

Issued To:

Student ID: **00687938**

**Zeming Liu**  
**TW5EYONO**

**Course Level: Undergraduate**

**Current Program**

Program : Bachelor of Arts  
College : Undergraduate  
Major : Political Science  
Philosophy

Degrees Awarded: Bachelor of Arts 26-MAY-2019

Program : Bachelor of Arts  
Major : Political Science  
Philosophy

Dept. Honors: Philosophy Honors  
Inst. Honors: summa cum laude

SUBJ NO.	COURSE TITLE	UNIT GRD	PTS R
----------	--------------	----------	-------

**TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:**

F/S 2014-15 Fudan University

TR TXXX	Transfer Credit Earned	3.00	TR
TR TXXX	Intro to Psychology	0.00	TR
TR TXXX	Basic Princ of Political Scien	0.00	TR
TR TXXX	Intro to Sociology	0.00	TR
Ehrs: 3.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00

F/S 2015-16 Fudan University

TR TXXX	Transfer Credit Earned	2.00	TR
TR TXXX	Ancient Greek Philosophy	0.00	TR
TR TXXX	Comp Study Political Systems	0.00	TR
Ehrs: 2.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00

AY 2017-18 Columbia U Columbia Coll

TR TXXX	Transfer Credit Applied	9.00	TR
TR TXXX	19th Cent Europ Philos: HE	0.00	TR
TR TXXX	European Social Philosp	0.00	TR
TR TXXX	Quantitative Politcl Res	0.00	TR
TR TXXX	Contemp Sociological Theo	0.00	TR
TR TXXX	Kant	0.00	TR
TR TXXX	Phenemology&Existential	0.00	TR
TR TXXX	Ethics	0.00	TR

\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

SUBJ NO.	COURSE TITLE	UNIT GRD	PTS R
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Transfer Information continued:

TR TXXX	Problems of Social Philos	0.00	TR
TR TXXX	History of the Self: Mont	0.00	TR
Ehrs: 9.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00

Summer 2018 Columbia U Columbia Coll

TR TXXX	Transfer Credit Applied	2.00	TR
TR TXXX	Hist of Phil: Aquinas to Kant	0.00	TR
TR TXXX	Topics in International Securi	0.00	TR
Ehrs: 2.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00

**INSTITUTION CREDIT:**

Spring 2016

MUSC 0101	Introduction to Western Music	1.00	A	4.00
PHIL 0180	Introduction to Modern Logic	1.00	A	4.00
PSCI 0102	American Political Regime	1.00	B+	3.33
PSCI 0227	Soviet & Russian Politics	1.00	A	4.00
Ehrs: 4.00	GPA-Hrs: 4.00	QPts: 15.33	GPA: 3.83	

College Scholar

Summer 2016 Language Schools

German School				
GRMN 3101	Elementary German	1.00	A	4.00
GRMN 3102	Elementary German	1.00	A	4.00
GRMN 3103	Elementary German	1.00	A	4.00
Ehrs: 3.00	GPA-Hrs: 3.00	QPts: 12.00	GPA: 4.00	

Fall 2016

GRMN 0201	Intermediate German	1.00	B+	3.33
HIST 0319	Philosophy of History	1.00	A-	3.67
PSCI 0103	Intro to Comparative Politics	1.00	B+	3.33
PSCI 0262	Might and Right Among Nations	1.00	A	4.00
Ehrs: 4.00	GPA-Hrs: 4.00	QPts: 14.33	GPA: 3.58	

**Dean's List**

\*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*

*Jennifer Thompson*  
Jennifer Thompson  
Registrar  
Middlebury



# Middlebury

Record of: **Zeming Liu**Date Issued: **14-APR-2022**Page: **2**

Issued To:

Student ID: **00687938**

SUBJ NO.	COURSE TITLE	UNIT	GRD	PTS	R				
Institution Information continued:									
						<b>TOTAL INSTITUTION</b>	<b>Earned Unt</b>	<b>GPA Hrs</b>	<b>Points</b>
							<b>25.00</b>	<b>25.00</b>	<b>95.33</b>
									<b>GPA</b>
									<b>3.81</b>
Winter 2017									
PSCI 0101	Intro to Political Philosophy	1.00	A-	3.67		<b>TOTAL TRANSFER</b>	<b>16.00</b>	<b>0.00</b>	<b>0.00</b>
Ehrs:	1.00	GPA-Hrs:	1.00	QPts:	3.67	GPA:	3.67		
Spring 2017						<b>OVERALL</b>	<b>41.00</b>	<b>25.00</b>	<b>95.33</b>
									<b>3.81</b>
						***** END OF TRANSCRIPT *****			
GRMN 0202	Intermediate German Continued	1.00	B+	3.33					
INTD 0306	American Constitutional Law	1.00	B+	3.33					
PHIL 0302	Philosophy of Plato	1.00	A-	3.67					
PSCI 0435	Contemporary Political Theory	1.00	A	4.00					
Ehrs:	4.00	GPA-Hrs:	4.00	QPts:	14.33	GPA:	3.58		
Dean's List									
Fall 2018									
PHIL 0209	Philosophy of Law	1.00	A	4.00					
PHIL 0252	Philosophy of Mind	1.00	A	4.00					
PHIL 0316	Philosophy of Science	1.00	A	4.00					
PHIL 0710	Senior Independent Research	1.00	A-	3.67					
Ehrs:	4.00	GPA-Hrs:	4.00	QPts:	15.67	GPA:	3.91		
College Scholar									
Winter 2019									
PHED 0302	Alpine Ski	0.00	P	0.00					
PHED 0354	Paddle Tennis	0.00	P	0.00					
RELI 1073	Spinoza's Book Forged in Hell	1.00	A	4.00					
Ehrs:	1.00	GPA-Hrs:	1.00	QPts:	4.00	GPA:	4.00		
Spring 2019									
PHIL 0310	Moral Psychology	1.00	A	4.00					
PHIL 0360	Consciousness	1.00	A	4.00					
PHIL 0408	Global Justice	1.00	A	4.00					
RELI 0362	Religion and Nationalism	1.00	A	4.00					
Ehrs:	4.00	GPA-Hrs:	4.00	QPts:	16.00	GPA:	4.00		
College Scholar									
***** CONTINUED ON NEXT COLUMN *****									

*Jennifer Thompson*  
 Jennifer Thompson  
 Registrar  
 Middlebury

**Middlebury**  
Middlebury, VT 05753

**Transcript Key**  
Phone: 802.443.5770

Web: go.middlebury.edu/registrar

#### Accreditation

Middlebury College is accredited by the New England Commission of Higher Education.

**Rank in Class**  
Middlebury College does not rank its students.

#### Course Numbering

Summer 2003 to present  
0100-0999 Undergraduate courses  
1000-1999 First Year Seminars, Winter Term Interdepartmental courses and Summer Study  
2000-2999 Undergraduate courses at Schools Abroad  
3000-3999 Undergraduate courses at Language Schools and School of the Environment  
5000-5999 Graduate courses at Schools Abroad  
6000-6999 Graduate courses at Language Schools  
7000-7999 Graduate courses at Bread Loaf School of English  
8000-8999 Graduate courses at Middlebury Institute of International Studies  
at Monterey

#### 1987 to Spring 2003 (through summer 2003 for Language Schools)

Undergraduate:  
100-199 Introductory level  
200-399 Intermediate level  
400-499 Advanced courses and senior seminars  
500-699 Independent projects  
700-799 Senior theses and projects

Schools Abroad and Language Schools:  
100-500 Undergraduate level  
501-999 Graduate level

Bread Loaf School of English: All courses are at the graduate level.

#### Undergraduate Semester Honors (from 1995)

College Scholar: semester grade point average of 3.60 or higher for students taking four or more courses, with no grade below B-.  
Dean's List: semester grade point average of 3.30 or higher for students taking four or more courses, with no grade below B-.

#### Undergraduate Graduation Honors (from 1995)

Summa cum laude: graduation average of 3.80 or higher  
Magna cum laude: graduation average of 3.60 or higher  
Cum laude: graduation average of 3.40 or higher  
Departmental honors (honors, high honors, highest honors) are awarded according to criteria established by the major department.

#### Undergraduate Course Equivalencies

Middlebury College is on a 4-1-4 calendar: Fall Term-13 weeks; Winter Term-4 weeks; Spring Term-13 weeks; Optional Summer Study Term-4 weeks. To qualify for a Bachelor of Arts degree, students must successfully complete 36 units.

**The suggested equivalent for an undergraduate course unit is 3.3 semester hours or 5 quarter hours. The suggested equivalent for an undergraduate course unit with associated lab is 4.0 semester hours or 6 quarter hours.**

For more information about academic policies, go to Section II: Academic Programs in the College Catalog at [www.middlebury.edu](http://www.middlebury.edu).

#### GRADING SYSTEM

Included in grade point average (GPA):

Beginning Fall 2006:			
UG	M.A./M.Litt	D.M.L.	
A+	4.00	4.00	
A	4.00	4.00	
A-	3.67	3.67	
B+	3.33	3.33	
B	3.00	3.00	
B-	2.67	2.67	
C+	2.33	2.33	
C	2.00	2.00	
C-	1.67	1.67	
D	1.00	1.00	
F	0.00	0.00	

A+ available only at graduate level as of Summer 2006.

Plus and minus grades are used only with A, B, C.

Graduate courses numbered 5000-7999: no credit or quality points for grades of C- and below for M.A./M.Litt. No credit or quality points for grades of B and below for D.M.L.

#### Not included in GPA:

S	Satisfactory
U	Unsatisfactory
H	Honors
P	Pass (equal to C- or better)
FL	Fall (Winter Term Only)
CR	Credit
NCR	No Credit
AUD	Audit
INC	Incomplete
NGR	No Grade Reported
AP	Advanced Placement credit granted
TR	Transfer credit granted
WD*	Withdrew before middle of course
WDP**	Withdrew Passing after middle of course
WDF**	Withdrew Failing after middle of course

\*Applies to Language Schools, Schools Abroad, Bread Loaf School of English and School of the Environment  
\*\*Applies to Language Schools and Bread Loaf School of English only.

Undergraduate GPA does not include pre-matriculation coursework, or courses taken off campus during summers or while withdrawn from the College (designated as TXXX course numbers).

Grades from approved study abroad or selected domestic programs (designated as T000 course numbers) are included in the GPA, beginning with the Fall 2003 term.

Laboratories are granted credit and graded as part of the courses of which they are a component.

#### Schools Abroad – Undergraduate

Middlebury considers a semester/academic year abroad equivalent to a semester/academic year in the U.S. The academic year at the Schools Abroad is divided into two semesters. Start and end dates vary significantly but are normally tied to the academic calendar of the local universities where students take their mainstream courses. The normal course load for undergraduates is 4 or 5 courses per semester, depending on the school, equivalent to 16 or 15 semester credit hours, respectively, or 20-25 quarter hours.

#### Language Schools, Schools Abroad (Graduate), School of the Environment, and Bread Loaf School of English

Normal course load at summer sessions:

4 units	Arabic, Chinese, Japanese, Korean, Russian undergraduate
3 units	Other undergraduate courses and graduate Language
3 units	School of the Environment
2 units	Bread Loaf School of English

Normal full-time course load for graduate programs in the fall and spring semesters vary. Please see the Schools Abroad web pages for details.

**The suggested equivalent for one unit taken in these schools is 3 semester hours or 4.5 quarter hours.**

#### Graduate Degrees: Language Schools

Master of Arts (M.A.) requires 12 units at the graduate level.  
Doctor of Modern Languages (D.M.L.) requires 8 units beyond the M.A. in the first language, plus 3 graduate units in the second language, an independent paper, research methodology workshops, comprehensive examinations, and a thesis. A teaching practicum is included in the 8 units.

#### Bread Loaf School of English

Master of Arts (M.A.) requires 10 units at the graduate level.  
Master of Letters (M.Litt.) in English requires 10 units beyond the M.A., including comprehensive written examinations or oral presentation.

Middlebury undergraduates who are admitted to graduate-level courses in the Language Schools, Schools Abroad, or the Bread Loaf School of English may choose to count such courses toward an undergraduate degree, or toward a graduate degree, but not both.



Name: Zeming Liu  
Print Date: 06/06/2023  
Student ID: N15339957  
Institution ID: 002785  
Page: 1 of 1

New York University  
Beginning of School of Law Record

Spring 2023

School of Law				
Non-Degree				
Major: None				
Rule of Law		LAW-LW 10342	3.0	A-
Instructor:	Jeremy J Waldron			
		AHRS	EHRS	
Current		3.0	3.0	
Cumulative		3.0	3.0	
End of School of Law Record				

Unofficial

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write in very strong support of Zeming Liu's application for a clerkship in your chambers. Zeming has a truly extraordinary intellect and will make a great clerk.

I have gotten to know Zeming in a range of contexts – student, research assistant, and more recently co-author of a piece we are writing together about recent developments in legal theory in China. Zeming is in the top five percent of students I have taught over twenty-one years at Columbia; intellectually I would put him among a handful of my very top students.

Zeming's journey to law school, and to the United States, has been non-traditional. Zeming started college at Fudan University in China, one of China's best schools. But he found the limited space for free thought to be constraining and thus started looking for options to continue his studies in the U.S. He wound up at Middlebury. Needless to say, the shift from life in Shanghai to small-town Vermont was a shock and far from easy. But Zeming excelled at Middlebury before deciding to pursue graduate work in philosophy at Tufts. His inter-est in moral and political philosophy led him to pursue a law degree rather than a Ph.D. in philosophy.

Zeming has a long-term interest in an academic career in the U.S. (he recently became a U.S. citizen). But he is still early in his legal career, and I could also see him becoming engaged in a career in practice as well. Unlike most students, Zeming is well-aware that he is still early in his legal career and is not in a rush. He is open-minded and wants to develop a range of experiences before committing to academia. Zeming has a deep intel-lectual interest in the law; he is unusual in the degree to which he seeks to understand every legal issue he confronts. He has developed a deep love of legal argument and sees law as a series of puzzles to work through. Zeming works incredibly hard at everything he does. In particular, he has worked very hard since coming to the U.S. to become a good writer in English. He now writes both insightfully and fluently, something rare for someone who only came to the US in college.

Zeming is wonderful to talk with about almost any subject. He knows a vast amount about a huge range of topics, from Kantian philosophy to the latest political gossip from China to (European) football. He has a keen critical eye; this is one reason I have enjoyed working with him so much (he is not afraid to tell me when he does not think much of one of my arguments).

Zeming's grades in law school are good, with the exception of the spring of his One L year. That was an incred-ibly stressful semester for Zeming and many of our students with family in China, as they watched from afar as family and friends struggled with the extensive lockdowns and resulting food shortages, in particular in Shang-hai. I had a number of students from China in my class that semester, including Zeming, so I know first-hand how hard it was for them to stay focused while their families and friends suffered. More recently, Zeming was one of the two best students in a seminar I co-taught during his 2L year on law in authoritarian systems.

In sum, Zeming will be a wonderful clerk. He is thoughtful and respectful and will be a great team player. Please do not hesitate to reach out if I can provide any additional information.

Sincerely,

Benjamin L. Liebman

Benjamin Liebman - bl2075@columbia.edu - 212-854-0678

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my great pleasure to write a letter of recommendation in support of Zeming Liu's application for a clerkship in your chambers. Zeming took my Constitutional Law course in the Fall 2021 semester and served as a Teaching Assistant for the same course in the Fall 2022 semester. As that trajectory suggests, I was favorably impressed with his academic performance and his personality in the 1L course. As a TA, my impression of Zeming only grew more favorable. I enthusiastically recommend him to you.

Zeming immigrated to the United States from China at the age of 20, completing his B.A. at Middlebury College and M.A. at Tufts University in Philosophy. Despite the challenges that such a transition would pose, Zeming earned summa cum laude honors at Middlebury. Having taught him Constitutional Law, I am not surprised at his top-notch performance at Middlebury. Zeming's passion and talent for intellectual challenges was plainly evident in his participation in my Constitutional Law course. He spoke up regularly, and his comments and questions revealed a curious and sharp analytical mind. Zeming's superb performance in the course, both orally and on the exam, earned him an A as a final grade and led me to offer him a TA position for the following year, which he accepted. My TAs attend classes, answer student questions, and conduct regular review sessions. In addition, I meet regularly with them to discuss course materials, questions the students have raised, and other course-related issues. This particular year, I also held several additional (optional) meetings with my TAs, which Zeming attended, to brainstorm for a Constitutional Law casebook I'm working on. Zeming was a valuable participant in every conversation, consistently offering smart and interesting observations and suggestions. He was also a very welcome presence: his agreeable personality, unfailingly positive attitude and sense of humor complement his intellectual rigor.

As you evaluate his application, please know that the second semester of Zeming's first year brought unusual stress, as his partner and many close friends in Shanghai suffered severely from the effects of Omicron-related shutdowns. That stress negatively affected Zeming's grades in the Spring 2022 semester. I would urge you to consider those circumstances in evaluating Zeming's academic performance. His much stronger grades in the prior and subsequent semesters much better reflect his intelligence, capacity, and work ethic.

Zeming has a real passion for law, and in particular for the theoretical and analytical challenges it poses. He is smart and responsible. And he is very likeable. I am confident he would make an excellent law clerk and a welcome addition to any judge's chambers. I recommend him without reservation.

Regards,

Christina Ponsa-Kraus  
George Welwood Murray Professor of Legal History

Christina Ponsa-Kraus - cdb2124@columbia.edu - 212 - 854 - 0722

June 11, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Zeming Liu for a clerkship in your chambers. Zeming is an exceptionally bright Columbia Law School student who completed an M.A. in philosophy before matriculating. He welcomes challenges; balances rigorous and precise analysis with attention to normative and theoretical questions; and brings a delightful sense of intellectual play, curiosity, and enthusiasm to his legal work. I believe he will be an excellent law clerk and recommend him to you highly.

I got to know Zeming in the fall of 2022 when he enrolled in my Legislation and Regulation course. Zeming stood out to me throughout the semester for his perceptive and enthusiastic class participation. He was always meticulously prepared for cold calls and had an impressive understanding of cases and legal rules, and he enriched our open discussions. For example, during a class discussion of *INS v. Chadha*, Zeming highlighted tensions between formalism and functionalism in separation of powers theory and offered a critique of the Court's decision insofar as it undermined congressional capacity to control agency decision-making even as the Court's own nondelegation doctrine emphasized the importance of congressional policymaking. Several times during the semester, classmates remarked that they found Zeming's class contributions intellectually invigorating.

Given his excellent participation throughout the term, I was not surprised that Zeming wrote an excellent final exam. He offered a lucid analysis of issues ranging from the use of linguistic canons in statutory interpretation, to exceptions to the APA's notice-and-comment rulemaking requirements, to *Chevron* deference in the age of major questions. His answers were smart, careful, and creative.

Over the course of the semester, I also had the pleasure of talking with Zeming outside of class. He again offered rigorous dissections of doctrine, as well as deep and genuine engagement with the theoretical underpinnings of rules. It was a delight to watch him put together ideas from different parts of the course as well as other legal subjects. Zeming's philosophical training was also evident in these conversations. After majoring in philosophy as an undergraduate at Middlebury College—and graduating *summa cum laude* despite having immigrated to the United States at age 19—Zeming earned an M.A. in philosophy at Tufts University. He came to law school to connect his interest in moral and political philosophy to concrete social and policy issues, and he has seized opportunities to do so, both in his coursework and through extracurricular pursuits including work for the *Columbia Journal of Transnational Law*, the Law and Political Economy Society, and the Society for Chinese Law.

Let me add a brief note about Zeming's writing. Zeming was born and raised in China and, as noted above, arrived in the U.S. during his college years. Although he is fluent in English, his writing bears traces of someone who has lived in an English-speaking environment for less than a decade. I hope this will not deter you from hiring him: he has a truly exceptional mind, and I am confident he will apply his excellent work ethic to continually refining his legal writing as well as further developing other legal skills.

In sum, I believe Zeming would be an asset to any judicial chambers. In addition to his copious talents, he demonstrates concern for others, engages respectfully and considerately with everyone he encounters, and has an upbeat and friendly demeanor. If I can be of any further assistance as you consider his application, please do not hesitate to contact me.

Sincerely yours,

Jessica Bulman-Pozen

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**ZEMING LIU**  
Columbia Law School, J.D. 2024  
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**Clerkship Application Writing Sample**

This writing sample is based on a memorandum from my 2022 summer internship at the National Center for Law and Economic Justice, a nonprofit public interest litigation group that regularly handles plaintiff-side class action lawsuits. The attorneys asked me to analyze the interpretations of the landmark Supreme Court decision *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) by different circuits. This writing sample has not been edited by others.

From: Zeming Liu  
To: National Center for Law and Economic Justice  
Re: Seventh Circuit Treatment of the Commonality Requirement in Employment Discrimination Class Actions After *Wal-Mart*

This memorandum focuses on the Seventh Circuit interpretation of the landmark Supreme Court decision *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), with respect to the commonality requirement for class certification under Federal Rule of Civil Procedure 23(c)(4) in employment discrimination lawsuits. In *Wal-Mart*, the plaintiffs, composed of approximately 1.5 million current and former Wal-Mart employees, alleged that the discretion exercised by their local supervisors over payments and promotion violated Title VII by incurring a disparate impact against women. Heightening the commonality requirement, the Supreme Court vacated class certification on the ground that there is no common contention “of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* at 350. At the core of the opinion is that the plaintiffs failed to establish “common injury” – in this case, a disparate-impact Title VII injury – due to an absence of a showing that the employer had operated under a general discriminatory policy. Instead, decisions regarding payment and promotion decisions were within local managers’ board discretion, exercised in a highly subjective manner. Under such circumstances, the requirements for class certification would not be satisfied even if the plaintiffs had established that the payment or promotion patterns differed significantly from nationwide or region-wide figures. *Id.*

The *Wal-Mart* decision was initially regarded as a heavy blow to plaintiff-side litigation alleging disparate impact, as it appeared to suggest that delegation of authority to local managers can single-handedly shield large-scale companies from class action lawsuits arising out of issues subject to local managers’ independent discretion. Interpreted this way, the decision would

effectively deny the possibility of a significant portion of class actions alleging systematic discrimination on the local level. Considering the difficulty of proceeding through individual litigations rather than collectively, *Wal-Mart* seemed to be foreshadowing some major policy consequences on issues such as workplace discrimination. Indeed, some commentators even described Wal-Mart as the “death knell” of employment class actions. *See e.g.*, John C. Coffee, Jr., “*You Just Can’t Get There from Here*”: *A Primer on Wal-Mart v. Dukes*, U.S. L. WK., July 19, 2011, at 52. Yet post-*Wal-Mart* doctrinal developments suggest that the Seventh Circuit has managed to narrow down the seemingly sweeping holding in *Wal-Mart* and maintain a pragmatic standard that leaves significant space for class certification in employment discrimination lawsuits. As a result, even though *Wal-Mart* did place a higher burden on the plaintiffs seeking class certification, it failed to become a major game changer, particularly within the 7<sup>th</sup> Circuit.

#### **A. Delegating Authority to Local Managers Does Not Itself Preclude Class Certification in the Seventh Circuit.**

The key message conveyed by the Seventh Circuit is that delegation of discretionary power to local-level supervisors does not constitute a *per se* barrier against class certification, even after the *Wal-Mart* decision. *McReynolds v Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482 (7th Cir. 2012) (reversing the district court’s denial of class certification for a group of employee-plaintiffs alleging racial discrimination in violation of Title VII under the disparate impact theory); *Bell v PNC Bank, N.A.*, 800 F.3d 360, 375 (7th Cir. 2015) (holding that the commonality requirement is satisfied if plaintiffs can show that discrimination has to do with broader company-wide policy, and not merely due to discretion exercised by local supervisors); *Ross v Gossett*, 33 F.4th 433 (7th Cir. 2022) (allowing class certification as long as the existence of a common policy is shown, regardless of whether the uniform policy reflects the visions

alleged by the plaintiffs). The cases generally interpret *Wal-Mart* as standing for the requirement that *some* organization-wide policy is necessary for class certification. For example, in *Ross*, the court notes that the contested issue in *Wal-Mart* is “the existence of *any* uniform policy.” *Ross*, 33 F.4<sup>th</sup> at 438. According to the majority, the basic rationale of the *Wal-Mart* decision is that a mere theory alleging “corporate culture” that permits bias against women to infest the discretionary decisionmaking of individual local managers, absent any evidence of *affirmative* company-wide policy, cannot meet the commonality requirement. *Id.* In other words, the commonality requirement demands “some glue” holding together the alleged reasons for all those decisions by local managers. *Id.*; *Bell*, 800 F.3d at 375. Accordingly, delegation of authority itself in no way poses any obstacle. A showing of uniform policy may satisfy the requirement even in a company that delegates significant discretionary authority to local managers.

The question, then, is what kinds of showing would suffice. The landmark decision *McReynolds* provided important clarification and effectively established a flexible standard. In that case, 700 African American brokers who worked for the defendant employer, Merrill Lynch, filed a class action that charged the company with racial discrimination in employment in violation of Title VII of the Civil Rights Act. *McReynolds*, 672 F3d, at 483. Their theory was that two policies that were meant to govern the discretion of local managers led to disparate racial impact. *Id.* at 489. One was a “teaming” policy that permitted brokers in the same office to form teams whose members shared clients, and the other was an “account distribution” policy under which the company would distribute the accounts of a departing broker to competing brokers with the best records. *Id.* The plaintiffs alleged that as a result, African American brokers found it difficult to join teams predominantly composed of white brokers, which were associated



with higher revenue and more clients. *Id.* Since African American brokers failed to generate as much revenue or attract as many clients as white brokers did, they also suffered from disproportionate account distributions. *Id.* at 490.

What made the facts of this case interesting is their similarity with *Wal-Mart*: Merrill Lynch delegated significant discretion to 135 “Complex Directors” who were able to veto teams and supplement the company criteria for distributions. *Id.* In other words, the final decisions directly influencing team formations and account distributions were within the discretionary authority of local managers. Indeed, the court noted that the case is similar to *Wal-Mart* “to the extent that these regional and local managers exercise discretion regarding the compensation of the brokers whom they supervise.” *Id.* If *Wal-Mart* implies that disparate impact directly caused by local-level discretion cannot establish common injury in such scenarios, it seems that class certification should be denied here as well.

The trial court indeed denied class certification, but the 7<sup>th</sup> Circuit reversed, noting that “the district judge exaggerated the impact on the feasibility and desirability of class action treatment of the fact that the exercise of discretion at the local level is undoubtedly a factor in the differential success of brokers, even if not a factor that overwhelms the effect of the corporate policies on teaming and on account distributions.” *Id.* at 491. Writing for the majority, Judge Richard Posner held that plaintiffs only need to show that some company-wide policy has contributed to the disparate impact, even though it is not a predominant or significant factor. He distinguished the case from *Wal-Mart* by pointing to the existence of company-wide policies that had allegedly exacerbated disparate impact: the “teaming” policy and the “account distribution policy.” These policies might not be the sole factor that caused the disparate impact: Hypothetically, there might still be severe racial discrimination by individual brokers and local

managers even without the company-wide “teaming” policy and “account distribution policy.” *Id.* If those policies had not existed at all, the scenario would have been legally indistinguishable from the situation in *Wal-Mart*, and no class certification would have been granted. *Id.* However, as long as the presence of some company-wide policy has allegedly aggravated discrimination, this *incremental* discriminatory effect could serve as the basis for common injury suitable for class-wide adjudication. *Id.* Furthermore, class certification should be granted in this case even though there was no indication that the corporate level of Merrill Lynch had any *intent* to discriminate against African American brokers. *Id.* at 490. Such a question is irrelevant to the disparate impact analysis under Title VII.

**B. The Commonality Requirement provided by *McReynolds* Is a Flexible One Based on Concerns for Judicial Economy.**

At the heart of Judge Posner’s opinion is an economic inquiry into whether the issue will be more effectively addressed on a class-wide basis. As he noted, the granting of class certification was not to suggest that there existed racial discrimination at any level of the company, or that the alleged policies indeed had a racial effect. *Id.* Rather, the point is that solving an array of individual cases in a single proceeding would be more efficient if there exists a uniform policy that is allegedly responsible for *some* personal injuries in each of those cases. The key factor for determining class certification is “whether the accuracy of the resolution would be unlikely to be enhanced by repeated proceedings.” *Id.* at 483. If not, then judicial economy demands that the injuries be solved on a class-action basis.

Notably, this approach was consistent with the approach the Seventh Circuit had taken prior to the *Wal-Mart* decision. As the majority quoted from a 2003 decision, “class action treatment is appropriate and is permitted by Rule 23 when the judicial economy form

consolidation of separate claims outweighs any concern with possible inaccuracies from their being lumped together in a single proceeding for decision by a single judge or jury.” *Mejdrech v. Met-Coil Systems Corp.*, 319 F.3d 910, 911 (7<sup>th</sup> Cir. 2003), cited by *McReynolds*, 672 F3d, at 491. The danger of class action proceedings, according to the majority, is that “resolving an issue common to hundreds of different claimants in a single proceeding may make too much turn on the decision of a single, fallible judge or jury.” *Id.* at 492. But if the remedy sought is injunctive relief rather than pecuniary relief, the determination of liability itself would not be adversely affected to any significant degree. *Id.*; see also *Butler v Sears, Roebuck & Co.*, 727 F.3d 796, 801 (7<sup>th</sup> Cir. 2013) (“a class action limited to determining liability on a class-wide basis, with separate hearings to determine—if liability is established—the damages of individual class members, or homogeneous groups of class members, is permitted by Rule 23(c)(4) and will often be the sensible way to proceed.”).

The requirement imposed by *McReynolds* is ultimately a flexible one. A class is likely to be certified in an employment discrimination case insofar as the plaintiffs can point to a uniform policy that has causally led to some identifiable disparate impact they collectively suffer, even though that impact is an incremental one. This central holding of *McReynolds* was further affirmed in *Chicago Teachers Union, Local No. 1 v Bd. Of Educ. Of Chicago*, 797 F3d 426, 436 (7<sup>th</sup> Cir 2015) (granting class certification to a class of African American teachers and a union who alleged that the Board of Education’s decision to reconstitute 10 schools – that is, to replace a school’s entire staff – led to disparate impact against African American teachers and staff members). In *Chicago Teachers Union*, the process of identifying schools for reconstitution had three steps: First, the Chicago Public Schools CEO identified all schools eligible by law for reconstitution due to bad performances. *Id.* at 436. Second, the CEO narrowed down the list by

removing schools that met another objective criterion. *Id.* The third step is a subjective one: “the CEO and other high-level board members attended a series of meetings in which they discussed the types of information that the group would consider concerning schools eligible for reconstitution, and then analyzed that information.” *Id.* At the end of the process, the CEO made final recommendations to the Board, all of which are accepted. The Board argued that class certification should not be granted because of the existence of the third step that involved subjective, discretionary decisionmaking. *Id.* at 435.

The court rejected the argument, holding that the first two objective steps constitute uniform policies sufficient to establish commonality: “The objective criteria in the first two steps narrowed the pool in such a way as to have a disparate impact on African American teachers.” *Id.* at 436. In reaching this conclusion, the majority invoked *McReynolds* and construed it as standing for the proposition that “a company-wide practice is appropriate for class challenge even where some decisions in the chain of acts challenged as discriminatory can be exercised by local managers with discretion—at least where the class at issue is affected in a common manner, such as where there is a uniform policy or process applied to all.” *Id.* at 438. According to the majority, the case was sufficiently similar to *McReynolds*: both involved discretionary decisionmaking tied to some company-wide practice – the uniform “teaming” and “account distribution” policies in *McReynolds* and the objective criteria regarding school reconstitution in *Chicago Teachers Union*. As long as such discretionary decisionmaking affected the class in a common manner because of such uniform practice, the commonality requirement is satisfied. *Id.* Largely consistent with the spirit of *McReynolds*, *Chicago Teachers Union* again demonstrated the flexibility of the Seventh Circuit’s approach to the commonality requirement even after the seemingly harsh *Wal-Mart* decision.

### C. *Wal-Mart* Still Poses Important Limits on the Eligibility of Class Certification.

It is important to note that *McReynolds* does not indicate that the existence of *any* uniform policy would meet the commonality requirement in the employment discrimination context. The mere “uniform policy” of delegating authority to local supervisors, for example, is insufficient. The Seventh Circuit made important clarification in *Bolden v Walsh Constr. Co.*, 688 F.3d 893 (7<sup>th</sup> Cir 2012] (holding that class certification was inappropriate because the plaintiffs’ experiences differed so significantly that the case was more in line with *Wal-Mart* than *McReynolds*). In *Bolden*, 12 African American plaintiffs alleged that the defendant, the Walsh Construction Company, practiced or tolerated racial discrimination in assigning overtime work and work conditions. *Id.* at 894-95. The district court granted class certification, and the Seventh Circuit reversed. Relying on *McReynolds*, the plaintiffs argued that the fact that the company had a uniform policy of granting discretion to superintendents, together with the allegation that those superintendents’ decisions had a disparate impact, justified class treatment.

The court rejected this argument, noting that the sites all had different superintendents, different policies, and different working conditions, and that the plaintiffs consequently had distinct experiences. *Id.* at 897-898. The bare existence of a company-wide policy of delegating authority to superintendents, without more substantive guidance, was insufficient for establishing commonality. *See also Bell*, 800 F.3d, at 376 (“Cases in which low-level managers use their given discretion to make individual decisions without guidance from and overarching company policy do not satisfy commonality because the evidence varies from plaintiff to plaintiff.”). Importantly, the court clarified that the economic rationale in *McReynolds* does not replace the requirement that there must be a common issue at stake and emphasized that the essential focus of *Wal-Mart* is still commonality rather than manageability. *Id.* at 898. In other words, a showing

that a class action lawsuit would be manageable does not automatically make class certification proper.

How to square *McReynolds* with *Bolden*? Although the court did not specify a categorical standard as to what kind of uniform policy would satisfy the commonality requirement, our analysis of *McReynolds* and other cases does give us some clues. In the employment discrimination context, it seems the court requires a proximate causal link between the substantive content of the company-wide policy itself and the alleged discriminatory impact. For example, in *McReynolds*, the uniform “teaming” policy and “account distribution” policy altogether proximately produced some disparate racial impact – that is, the fact that African American brokers were not able to gain equal access to good sources of revenue, clients, and redistributed accounts. Not only the discriminatory impact would not have been caused but for the policies in *McReynolds*, but such impact also bore a sufficiently characteristic relationship with the policy itself. In other words, the uniform policies identified by the plaintiffs could help judges and jurors to make intelligible the patterns of the discriminatory impact to the extent that it would be intellectually productive to resolve different plaintiffs’ cases in a single proceeding. In contrast, even though the mere “uniform policy” of delegation *enabled* the local-level managers to make discretionary decisions ultimately led to the alleged discriminatory impact in *Bolden*, the causal link was still not proximate enough to the extent that the patterns of discrimination could be made intelligible by such policy. Local managers did not exercise their discretion in a common way, and different plaintiffs shared different patterns of harm under different circumstances. *Bolden* 688 F3d, at 897-898. Therefore, the “uniform policy” itself could hardly contribute anything to people’s understanding of the disparate impact. This is also the case for *Wal-Mart*: the harms of different plaintiffs vary so significantly that no single

common issue could ground those different cases. Under this kind of circumstance, a class action proceeding would be neither feasible nor intelligible.

The standard set forth by *McReynolds* and developed by subsequent cases thus left ample room for plaintiff-side class action litigation over employment discrimination and other like cases within the 7<sup>th</sup> Circuit jurisdiction even after *Wal-Mart*. As it turned out, the existence of delegation of discretionary decisionmaking authority to local-level managers or superintendents does not itself pose an obstacle against class certification for employment discrimination actions under Title VII. Numerous cases have shown that even though such delegation does exist, the plaintiffs can satisfy the commonality requirement by a showing that there exists some company-wide, uniform policy allegedly responsible for some disparate impact. In other words, class certification is proper if local managers exercise their discretion in a common way attributable to a uniform policy. As long as the link between the uniform policy and the disparate impact is sufficiently proximate so that an intelligible common ground to solve different plaintiffs' claims exist, it would be feasible for the court to solve the legal claims based on the identified disparate impact in a single class action proceeding.

Finally, even though this memo only discusses the 7<sup>th</sup> Circuit treatment of *Wal-Mart*, it must be noted that this particular treatment has been influential beyond the circuit border. The Fourth Circuit, for example, heavily relied on *McReynolds* and *Bolden* in holding that the district court erred in denying class certification because it "failed to consider whether in light of the discretion alleged, the discretion was exercised in a common way under some common direction, or despite the discretion alleged, another company-wide policy of discrimination was also alleged, and whether the discretionary authority at issue was exercised by high-level managers." *Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105, 108 (4th Cir. 2013). As such, the 7<sup>th</sup> Circuit

interpretation might help class action litigations alleging employment discrimination to proceed in other federal courts as well.



**Applicant Details**

First Name **Maria**  
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**Applicant Education**

BA/BS From **University of California-Irvine**  
Date of BA/BS **June 2019**  
JD/LLB From **Stetson University College of Law**  
[http://www.nalplawschoolsonline.org/ndlsdir\\_search\\_results.asp](http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp)  
Date of JD/LLB **May 18, 2024**  
Class Rank **25%**  
Law Review/Journal **Yes**  
Journal(s) **Stetson Law Review**  
Moot Court **Yes**  
Experience  
Moot Court Name(s) **Philip C. Jessup International Law Moot Court Competition**

**Bar Admission****Prior Judicial Experience**

Judicial Internships/  
Externships      **Yes**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Professional Organization**

Organizations      **Just the Beginning Organization**

### **Recommenders**

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**This applicant has certified that all data entered in this profile and  
any application documents are true and correct.**

Maria Lozonschi  
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May 13, 2023

The Honorable Jamar K. Walker  
United States District Court for the Eastern District of Virginia  
Walter E. Hoffman  
600 Grandby Street  
Norfolk, VA 23510

Dear Judge Walker:

I was eight years old when my grandmother took me to my first courthouse: the Palace of Justice in Iași, Romania. Having parents who lived through the Romanian communist regime instilled in me from an early age discipline, determination, and the importance of democracy, which have become the cornerstone of my character. For almost two decades this discipline was evidenced in my dedication to the arts and ballet. Today, this determination is seen in my passion for the law, which I hope can be furthered by having the privilege of serving as a 2024 term law clerk in your chambers.

My strong writing skills have been demonstrated through my work with the *Stetson Law Review* where I now serve as Notes and Comments Editor, receiving the Highest Grade Designation in my first-year Research and Writing I class, and my experience on the Moot Court Board, which has sharpened my critical thinking and analytical skills. Winning first place in Stetson Law's 1L Mock Trial Competition and second place brief in the Washington D.C. region for the Philip C. Jessup Moot Court Competition show my ability to decipher complex legal issues and succinctly communicate. I further honed my writing abilities at The Market Project, a non-profit assisting in the rehabilitation and employment for survivors of humanitarian crimes, where I learned to write on emergent issues. My writing was additionally fortified by serving as a federal judicial intern for Judge Julie S. Sneed, who exposed me to the internal operations of a federal court with its accompanying research and writing in a judicial setting.

Amidst my law school commitments, I have also had the privilege of working part-time at GrayRobinson, which has taught me to be efficient in handling multiple time-sensitive projects in a timely manner. Ultimately, what qualifies me for this position is the maturity, adaptability, and fierce determination I demonstrated by moving across the United States and abroad, learning multiple languages, and overall overcoming cultural, linguistic, and geographic barriers since I was young.

I have enclosed my resume, transcript, and writing sample. In addition, letters of recommendation from three of my professors, Anne E. Mullins, Ellen S. Podgor, and Susan D. Rozelle, will be sent under separate cover. Thank you for your time and consideration of my qualifications.

Respectfully,



Maria Lozonschi

## Maria Lozonschi

114 Martinique Ave | Tampa, FL 33606 | mlozonschi@law.stetson.edu | 608-354-9025

### Education

#### **Stetson University College of Law, Gulfport, FL**

Candidate for Juris Doctor

May 2024

GPA: 3.310 Rank: 73/276 (Top 26.4%)

Honors: Honor Roll (Fall 2021 & Fall 2022)

Highest Grade Designation in Research & Writing I (Fall 2021)

1st Place, 2022 1L Mock Trial Competition

Honorable Mention Appellate Advocate, Research & Writing II Section 2

2nd Place Brief & Quarterfinalist (Ranked 7/30), 2023 Philip C. Jessup Regional Competition

Activities: *Stetson Law Review*, Notes & Comments Editor Elect

Moot Court Board, Member

Phi Delta Phi Legal Honor Society, Historian

#### **University of California – Irvine, Irvine, CA**

Bachelor of Arts, International Studies

June 2019

GPA: 3.347

Honors: Dean's Honor List (2016 & 2018)

Activities: Delta Delta Delta Sorority

I Never Stand Alone "INSA" Dance Team

### Experience Highlights

#### **GrayRobinson, Tampa, FL**

Part-Time Law Clerk

January 2023 – Present

- Analyzing federal, state, and local regulations to advise businesses within food and beverage industry.
- Conducting due diligence and drafting final reports by reviewing zoning municipal codes.
- Assisting in civil litigation by researching and preparing documents for serving evasive defendant.

#### **United States District Court for the Middle District of Florida, Tampa, FL**

Intern for Honorable Julie S. Sneed, Magistrate Judge

May 2022 – July 2022

- Drafted order and memorandum on a social security order and writ of execution on foreign judgment.
- Updated government request standards for evidentiary collection for Judge Sneed.
- Observed federal and state court proceedings.

#### **The Market Project, Washington, D.C.**

Post-Undergraduate Research Internship

June 2017 – August 2017 & October 2020 – August 2021

- Drafted internal reports and conducted research on various topics including legal environments for businesses in Myanmar and Ukraine, mental health needs of trafficking survivors, and access to decent employment in Uganda.
- Identified key provisions for employee rights using The Market Project's Human Resources manual.
- Analyzed the economic and social impact of one of the non-profit's market-based businesses on the local population.
- Provided strategic planning and drafted policy guidelines for non-profit's social media campaign.

### Languages

**Romanian** (fluent) | **Spanish** (conversant)

### Personal Interests

Ballet and piano (18 years); musical theater and singing (13 years); watching stand-up comedy; surfing



## Institution Credit

Term : Fall 2021-Law

Academic Standing

Good Standing

Additional Standing

Honor Roll

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1150	Law School-GULFPORT	LW	CIVIL PROCEDURE	325	4.000	13.00	
LAW	1181	Law School-GULFPORT	LW	CONTRACTS	350	4.000	14.00	
LAW	1200	Law School-GULFPORT	LW	CRIMINAL LAW	300	4.000	12.00	
LAW	1270	Law School-GULFPORT	LW	RESEARCH AND WRITING I	400	4.000	16.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	16.000	16.000	16.000	16.000	55.00	3.437
Cumulative	16.000	16.000	16.000	16.000	55.00	3.437

Term : Spring 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	1195	Law School-GULFPORT	LW	CONSTITUTIONAL LAW I	275	4.000	11.00	
LAW	1251	Law School-GULFPORT	LW	REAL PROPERTY	325	4.000	13.00	
LAW	1275	Law School-GULFPORT	LW	R&W II - GENERAL APPELLATE	350	3.000	10.50	
LAW	1290	Law School-GULFPORT	LW	TORTS	300	4.000	12.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	15.000	15.000	15.000	15.000	46.50	3.100
Cumulative	31.000	31.000	31.000	31.000	101.50	3.274

See grading scale explained on page 3.



Term : Summer 2022-Law

Academic Standing

Good Standing

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	3691	Law School-GULFPORT	LW	LAW REVIEW	S+	1.000	0.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	1.000	1.000	1.000	0.000	0.00	
Cumulative	32.000	32.000	32.000	31.000	101.50	3.274

Term : Fall 2022-Law

Academic Standing

Good Standing

Additional Standing

Honor Roll

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	2190	Law School-GULFPORT	LW	EVIDENCE	350	4.000	14.00	
LAW	2350	Law School-GULFPORT	LW	PROFESSIONAL RESPONSIBILITY	325	3.000	9.75	
LAW	3265	Law School-GULFPORT	LW	CRIM PROCEDURE - ADJUDICATION	350	3.000	10.50	
LAW	3691	Law School-GULFPORT	LW	LAW REVIEW	S+	1.000	0.00	
LAW	3754	Law School-GULFPORT	LW	MOOT COURT BOARD	S	2.000	0.00	

Term Totals	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term	13.000	13.000	13.000	10.000	34.25	3.425
Cumulative	45.000	45.000	45.000	41.000	135.75	3.310

## Transcript Totals

Level Comments

CLASS RANK FOR Fall 2022-

Law: 73/276

Transcript Totals - (Law)	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution	45.000	45.000	45.000	41.000	135.75	3.310
Total Transfer	0.000	0.000	0.000	0.000	0.00	0.000
Overall	45.000	45.000	45.000	41.00	135.75	3.310

School Grading Scale

4.00	A
3.75	A-
3.50	B+
3.25	B
3.00	B-
2.75	C+
2.50	C-



STETSON LAW

February 24, 2023

Your Honor,

I write to support Maria Lozonschi's candidacy for a clerkship in your chambers. Ms. Lozonschi was a student in my Research & Writing I and II classes her 1L year, so I have known her since August 2021. I know her well enough to write this recommendation with confidence: Both classes met twice each week, I hosted multiple individual conferences with my students throughout the semester, and Ms. Lozonschi was a regular visitor to my office hours. I recommend her to you with enthusiasm.

Ms. Lozonschi is bright and hardworking. Research & Writing I focuses on fundamental legal analysis, writing, and research; Research & Writing II focuses on persuasive writing and analysis. Ms. Lozonschi always showed up to class prepared and ready to work. She started the year strong and most of her assignments were among the best in the class. In fact, her final paper in Research & Writing I was the best in the class, by a substantial margin. It earned her the top final grade in the class.

Just as important, Ms. Lozonschi is collaborative and coachable. I place my students into permanent five-person teams for the entire semester. Ms. Lozonschi earned her teammates' trust through hard work, listening carefully to what they said, and asking thoughtful questions of her team and of me. Moreover, Ms. Lozonschi is coachable. While so many students struggle with constructive feedback, Ms. Lozonschi almost revels in it. (I actually asked her about this because I'd love to replicate whatever she has for the rest of my students; she credits many years of tough feedback and hard work in dance and musical theater.) Her classroom contributions and her approach to work outside of class convince me that she has the skillset, maturity, and professionalism to succeed in a fast-paced clerkship.

On a more personal note, Ms. Lozonschi is pleasant and quietly confident. Ultimately, I think she would be a good addition to a small chambers environment. Should you have any questions, please contact me via my cell phone at (504) 258-2285 or via email at [amullins@law.stetson.edu](mailto:amullins@law.stetson.edu).

Sincerely,

*/s/ Anne E. Mullins*

Anne E. Mullins  
Professor of Law  
Associate Dean for Assessment  
& Professional Engagement





STETSON LAW

May 15, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Re: Maria Lozonschi – Clerkship

Dear Judge Walker:

I am writing to recommend Maria Lozonschi for a clerkship in your court. In addition to being an Honor Roll student, Notes and Comment Editor of the *Stetson Law Review*, receiving the highest-grade designation in Research & Writing I, Ms. Lozonschi is also a moot court star. Most importantly she is also a caring, thoughtful, and well-rounded individual who has life experience well beyond other students. I recommend her without any reservations.

I had the pleasure of having Ms. Lozonschi in my Fall Criminal Procedure Adjudication class, where she performed at the top of her class. She volunteered to handle some of the more difficult cases in class. She excelled in speaking about the *Wayte* selective prosecution case and her preparedness was demonstrated in her providing a succinct recitation of the facts from the *Padilla* case.

I have had several conversations with Ms. Lozonschi and have been amazed by her work ethic, which may be in part to her having studied piano and ballet for 18 years. In addition to being a full-time student, she also works part-time at the law firm of GrayRobinson. What is particularly impressive here is that she continues to maintain high grades and is an active member of Stetson's Moot Court Team, currently serving on the Jessup Moot Court Team, and has a position with the law review as Notes and Comments Editor. Making a trial or moot court team at Stetson is a feat within itself as the Law School has continually been ranked as one of the top law schools in the country in advocacy. She is not only a top advocacy student, but she also won first place in Stetson Law's Annual Mock Trial competition. Her advocacy skills go beyond oral skills as she writes extremely well, and this is particularly impressive as English was not her first language.

Ms. Lozonschi was born in Japan following her parents leaving Romania. She has maturity well beyond her age no doubt in part because she has lived in many areas of the world and experienced different cultures. She is fluent in Romanian and conversant in Spanish. She understands the importance of democracy and comes to the legal world with a desire to give back to society.

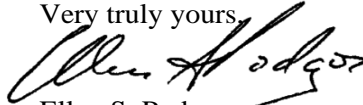
I have watched her interact with other students, and she is well-liked and adaptable in many different social settings. I have no doubt that she will be a good citizen in your court. I feel

The Honorable Jamar Walker  
May 15, 2023  
Page 2

comfortable in stating that this is a student who will work extremely hard, perform spectacularly, and have the humor and quietness that will make her a treasure in your chambers.

If I can provide additional information, please do not hesitate to reach out to me. My email is [epodgor@law.stetson.edu](mailto:epodgor@law.stetson.edu) and cell number is 404-915-0800.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ellen S. Podgor". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ellen S. Podgor  
Gary R. Frombley Family White Collar Research Professor  
Professor of Law

May 15, 2023

The Honorable Jamar Walker  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I highly recommend Maria Lozonschi to your chambers. Both in and out of the classroom, Maria has demonstrated the intellect, drive, work ethic, and commitment to helping others that have made her the outstanding law student she is today. Those same qualities would make her an outstanding judicial law clerk after graduation.

I first met Maria as a student in my Evidence class. She quickly stood out as a dependable and insightful contributor to the class discussion, with an unusual capacity to understand the rules – not only as an intellectual matter, but also with respect to their real-world impact on human beings. During our interactions in office hours, I witnessed her initiative and organizational skills. It was no surprise when she performed well on my exam. Even more important to me, though, is the way she comports herself. She displays a consistent, earnest empathy and a graceful professionalism that reflect well on her, and will reflect well on anyone for whom she works, as well.

Finally, and I suspect most persuasively, is her experience. Having served as an intern in Judge Sneed's chambers already, Maria is better prepared than most to serve as a judicial law clerk after graduation. Again, I recommend her very highly indeed. If you have any questions, or if there is anything further I can do to advance Maria's application, please do not hesitate to contact me. My office number is (727) 562-7321, and it would be my pleasure to speak with you.

Sincerely,

Susan D. Rozelle  
Professor of Law

Susan Rozelle - srozelle@law.stetson.edu

**Maria Lozonschi**

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**Writing Sample**

The following writing sample was submitted as an assignment for Civil Appellate Procedure (excluding the cover page) and written using Bluebook as reference for citations. This sample is a motion to dismiss on the issue of whether the State of Florida's appeal of a non-final judgment, is directly related to Hillsborough County's partial final judgment under Fla. R. App. P. 9.110(k). I was assigned to argue that it was not directly related and therefore the court was required to dismiss the State's appeal.

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**IN THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT, STATE OF FLORIDA**

CASE No. 2D21-2997  
L.T. CASE No. 2021-07364

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JONATHON HUNT, ET. AL.

*Appellants,*

v.

STATE OF FLORIDA,

*Appellee.*

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**MOTION TO DISMISS**

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February 10, 2023

MARIA LOZONSCHI

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## **INTRODUCTION**

Appellant, the State of Florida (“the State”), believes it has jurisdiction under Florida Rule of Appellate Procedure 9.110(k). (R. 1). The State therefore seeks to appeal the denial of its motion to dismiss issued in conjunction with Hillsborough County’s (“the County”) partial final judgment. (R. 1). Unlike the partial final judgment, the State’s motion is not a final judgment.

While the appellate court may still review “any matter or ruling,” including the State’s motion to dismiss, the ruling must be “directly related” to the partial final judgment. Fla. R. App. P. 9.110(k). Here, the State’s motion is not directly related to the County’s partial final judgment and therefore not appealable. Accordingly, the court should dismiss the State’s appeal.

## **BACKGROUND**

Appellees are bump-stock owners who sued the State of Florida and Hillsborough County on the grounds that both entities committed a joint taking: “the State enacted the bump-stock ban, and the County enforced it within . . . [its] borders.” (R. 1). Appellees assert that the ban has “left their bump stocks valueless.” (R. 1).

The State moved to dismiss Appellees' claims, declaring that no taking had occurred and therefore it was not responsible. (R. 1). At the same time, the County moved for summary judgment. (R. 1). And it reasoned that if any taking occurred, it was the State's enactment of the bump-stock ban that left Appellees' property valueless. (R. 1).

In one joint order, the circuit court granted the County's motion for summary judgment and denied the State's motion to dismiss. (R. 1). Partial final judgment was entered for the County. (R. 1).

Dissatisfied with the ruling, the State noticed its appeal ten days after the order. (R. 1). The notice included the County's grant of summary judgment and State's denial for motion to dismiss. (R. 1).

Now the State seeks to appeal the circuit court's denial of its motion to dismiss under Rule 9.110(k). (R. 1).

## **ARGUMENT**

### **I. THE STATE'S MOTION TO DISMISS IS NOT A FINAL JUDGMENT.**

The finality of a judgment or order determines an appellate courts' scope of review. 2 Philip J. Padovano, *Florida Appellate Practice* § 18:2, Westlaw (database updated Mar. 2022). Appellate courts exercise broad scope of review if the judgment is final,

reviewing all decisions made at the lower tribunal; conversely, appellate courts exercise a much narrower scope of review when reviewing appeals from orders that are non-final. *Id.* The Florida Supreme Court held an “order, judgment or decree” final when there is “an end to the judicial labor in the cause, and nothing further remains to be done by the court to effectuate a termination of the cause as between the parties directly affected.” *S.L.T. Warehouse Co. v. Webb*, 304 So. 2d 97, 99 (Fla. 1974). The purpose of the finality rule is to avoid piecemeal (or successive) appeals. *Id.*

Here, the State’s motion to dismiss is not a final judgment. There is no end to the judicial labor for the State as the court must still determine the State’s liability for the takings claim. (R. 1). Since there is no final resolution to the litigation, the order is not final.

## **II. THE COUNTY’S MOTION FOR SUMMARY JUDGMENT IS A PARTIAL FINAL JUDGMENT.**

Because the order is non-final, the State tries to travel through a narrow provision permitting appellate review of partial final judgments. A partial final judgment is appealable as a final order if it disposes of “an entire case as to any party” and appealed within 30

days of the date of rendition. Fla. R. App. P. 9.110(k); *see Shephard v. Ouellete*, 854 So. 2d 251, 252 (Fla. 5th DCA 2003).

Here, the circuit court's order disposed of an entire party (the County) from the case. (R. 1). And the State noticed its appeal ten days after (within the thirty-days) the order was rendered. (R. 1). Therefore, it is an appealable, partial final judgment.

### **III. THE STATE'S MOTION IS NOT DIRECTLY RELATED TO THE COUNTY'S PARTIAL FINAL JUDGMENT.**

This court however cannot review the State's appeal of its non-final order (the denial of its motion to dismiss) under Fla. R. App. P. 9.110(k). Because it fails to satisfy its key provision: "directly related."

#### **A. Rule 9.110(k) clearly bars attempts to lump unrelated orders together.**

Florida Rule of Appellate Procedure 9.110(k) provides that:

The scope of review of a partial final judgment may include *any ruling or matter* occurring before filing of the notice of appeal so long as such ruling or matter is *directly related* to an aspect of the partial final judgment under review.

(emphasis added). The broad language of "any ruling or matter" engulfs final and non-final judgments. *United States v. Pendergrass*, 995 F.3d 858, 872 (11th Cir. 2021) (If the plain text is unambiguous, no further analysis is required.). As "any ruling or matter," the State's

denial of its motion may be appealed only if it is “directly related” to the County’s partial final judgment. Fla. R. App. P. 9.110(k).

But courts are largely silent on what “directly related” means in the context of 9.110(k) appeals. Therefore, a statute or rule’s purpose and legislative history may be used to guide the court’s analysis beyond the mere ambiguous, text. *Lindley v. F.D.I.C.*, 733 F.3d 1043, 1055 (11th Cir. 2013).

At any rate, taking the terms separately: “direct” is defined as “straight; undeviating, a direct line, free from extraneous influence, immediate;” and “related” is a connection or relationship between two matters. *Direct, Related*, BLACK’S LAW DICTIONARY (11th ed. 2019).

Legislative amendments to Rule 9.110(k) also provide guidance. In 1984, the legislature added subdivision (k) to the rule. Fla. R. App. P. 9.110(k) advisory committee’s notes to 1984 amendment. The purpose was to correct the procedural pitfalls created by *Mendez v. West Flagler Family*, 303 So. 2d 1, 5 (Fla. 1974), requiring distinct and separate actions to be immediately appealed otherwise “the right to appeal was lost.” *Jensen v. Whetstine*, 985 So. 2d 1218, 1220 (Fla. 1st DCA 2008). Now, under the modified rule and applying the *Mendez* rationale, appeals may be “taken immediately or delayed

until the end of the entire case.” Fla. R. App. P. 9.110(k) advisory committee’s notes to 1984 amendment.

In 2018, the legislature again amended 9.110(k) to clarify that “subdivision (h) does not expand the scope of review of partial final judgments to include rulings that are not directly related to and an aspect of the final order under review.” Fla. R. App. P. 9.110(k) advisory committee’s notes to 2018 amendment. These various amendments indicate the legislature’s “creation of a second window” for appellate review, while simultaneously confining it to only “directly related” matters. *Portis v. Seatruck, Inc.*, 98 So. 3d. 1234, 1235–36 (Fla. 3d DCA 2012).

Another part of 9.110(k) (not the scope of review provision), provides claims are “directly related” if arising out of a common set of facts or single transaction. *Jensen*, 985 So. 2d at 1220; *see Gov’t Emps. Ins. Co. v. Arreola*, 231 So. 3d 508, 511 (Fla. 2d DCA 2017).

Permissive counterclaims further expand on what it means to arise out of a single event or transaction—and exhibits similarities to 9.110(k)’s “directly related” provision. Fla. R. Civ. P. 1.170(b). These counterclaims are generally appealable since by definition they do “not aris[e] out of the transaction or occurrence that is the subject

matter of the opposing party's claim." *Campbell v. Gordon*, 674 So. 2d 783, 785 (Fla. 1st DCA 1996) (quoting Fla. R. Civ. P. 1.170(b)). In *Cunningham v. MBNA America Bank, N.A.*, 8 So. 3d 438, 441 (Fla. 2d DCA 2009), the court found plaintiff's first two claims on debt-collection-act violations "inextricably tied to the transaction or occurrence underlying" the Bank's claim. By contrast, the defamation and negligence claims were permissive and did not arise out of necessarily related events, "temporally [n]or on the merits." *Id.*

In sum, not only has the legislature authorized immediate appeal for directly related rulings or matters. But other parts of Rule 9.110(k) and other procedural rules suggest "directly related" might require an inquiry into whether the prior judgments arise out of a set of common facts or single transaction.

**B. Case law outside of Rule 9.110(k) saves courts by providing guidance on "directly related" meaning.**

"Directly related," while largely absent from 9.110(k) appellate scope of review discussion, is a phrase peppered throughout Florida case law in other contexts.

In fact, it often appears throughout medical malpractice suits. The Florida Supreme Court held that "directly related" claims are

established when “the act from which the claim arises [is] . . . directly related to medical care or service.” *Nat’l Deaf Acad., LLC v. Townes*, 242 So. 3d 303, 305 (Fla. 2018); *see also Ramey v. Haverty Furniture Co., Inc.*, 993 So. 2d 1014, 1019–20 (Fla. 2d DCA 2008). “State[d] another way” the court reasoned that “the injury must be a direct result of receiving medical care or treatment by the health care provider.” *Nat’l Deaf Acad.*, 242 So. 3d at 310 (quoting *Quintanilla v. Coral Gables Hosp., Inc.*, 941 So. 2d 468, 469 (Fla. 3d DCA 2006)). There, the claim “arose out of the hospital employee leaving her badge and keys unattended where the patient could access them, not out of any act directly related to medical care or service . . . .” *Id.* at 313.

Medical records are also “directly related” when there is a sufficient “nexus” between the records and a material issue in the case. *Gomillion v. State*, 267 So. 3d 502, 507 (Fla. 2d DCA 2019) (quoting *Faber v. State*, 157 So. 3d 429, 431 (Fla. 2d DCA 2015)).

Courts have further distinguished between truly separated and “directly related” claims. To illustrate in *James River v. Hufsey Associates, Inc.*, 558 F. App’x 924, 925, 928–29 (11th Cir. 2014), the court found the engineer’s failure to properly design hotel’s plumbing and filtration systems “directly related” to the subsequent



contamination of the hotel's water—and thus the damages suit was properly made. This differs from a damages claim seeking recovery costs to replace water and sewer lines as a result of architect's negligence; rather than seeking recovery costs as a result of the direct contamination or pollution. *Id.* (citing *Evanston Ins. Co. v. Treister*, 794 F. Supp. 560, 572 (V.I. 1992)). This subtle distinction illustrates how closely related is not the twin of “directly related.”

Moreover, “directly related” language is also used to examine the scope of review under the forum-selection clause. In *Stiles v. Bankers Healthcare Group, Inc.*, 637 F. App'x 556, 562 (11th Cir. 2016), the court coupled “directly related” with “if not predicated on” language—such that they are “completely derivative.”

Here, the State's motion to dismiss is *not directly related* to the County's partial final judgment. As with the permissive counterclaims in *Cunningham*, the motions here are neither temporally related nor related on the merits. The State's enactment of the ban *and* the County's enforcement are two separate events. (R. 1). And each motion focuses on a different aspect of the event or transaction that took place. (R. 1).

Furthermore, the motions are not “directly related” such that one is the direct result of the other. As the direct party under fire and entity that first enacted the ban—the State’s motion focused on a no-takings analysis. (R. 1). Whereas the County’s motion for summary judgment only argued that if any taking occurred, the State was responsible. (R. 1). Like *Nat’l Deaf Acad.*, where the patient’s injury was not a direct result of medical service, the State’s motion is also not the “direct result” of the County’s summary judgment motion.

Since the State’s motion is not predicated on or “completely derivative” of the County’s motion, there is an insufficient “nexus.” Thus, the motion is not directly related to the partial final judgment under review. In a word, the court should only crack open the second window of appellate review for directly related rulings or matters.

### **CONCLUSION**

Accordingly, the State’s motion to dismiss is a non-appealable, non-final judgment. And the court should deny the State’s motion to appeal under 9.110(k).

Dated: February 10, 2023

Respectfully submitted,

Maria Lozonschi

## Applicant Details

First Name	DanLan
Last Name	Luo
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:dl3455@columbia.edu">dl3455@columbia.edu</a>
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Contact Phone Number	4403718064

## Applicant Education

BA/BS From	Boston University
Date of BA/BS	May 2020
JD/LLB From	Columbia University School of Law
	<a href="http://www.law.columbia.edu">http://www.law.columbia.edu</a>
Date of JD/LLB	May 22, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Journal of Environmental Law
Moot Court Experience	Yes
Moot Court Name(s)	Environmental Law Moot Court

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	Yes
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Post-graduate Judicial Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Pannu, Camille  
cpannu@law.columbia.edu  
Glass, Maeve  
maeve.glass@law.columbia.edu  
\_212\_ 854-0073  
Menand, Lev  
lmenand@law.columbia.edu  
(212) 854-0674

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

DanLan (Danni) Luo  
265 Cabrini Boulevard Apt. 6E  
New York, NY 10040  
440-371-8064

June 11, 2023

The Honorable Jamar K. Walker  
United States District Court  
Eastern District of Virginia  
Walter E. Hoffman United States Courthouse  
600 Granby Street  
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year student and the Senior Submissions Editor of the Journal of Environmental Law at Columbia Law School. I write to apply for a clerkship in your chambers beginning in 2024.

As you will see from my resume, I have dedicated my undergraduate and law school experiences to research and public service. I hope to pursue a career in legal academia and either health or environmental law. I aim to gain expertise in the federal court system by serving as a clerk. At Columbia, I have honed my analytical and writing skills as a research assistant, teaching assistant, and extern for Judge Sack. Next semester, I will continue work on environmental issues as a member of the Just Transition Clinic. I would be honored to contribute these skills to your chambers.

Enclosed please find my resume, transcript, and writing sample. You will be receiving letters of recommendation from the following professors:

- Camille Pannu, Columbia Law School, [cpannu@law.columbia.edu](mailto:cpannu@law.columbia.edu), (212) 854-4635
- Lev Menand, Columbia Law School, [lmenand@law.columbia.edu](mailto:lmenand@law.columbia.edu), (212) 854-0409
- Maeve Glass, Columbia Law School, [mglass2@law.columbia.edu](mailto:mglass2@law.columbia.edu), (212) 854-0073

I would welcome the opportunity to interview with you. Thank you for your time and your consideration.

Respectfully,



DanLan (Danni) Luo

**DANLAN (DANNI) LUO**

265 Cabrini Boulevard, Apt. 6E, New York, NY, 10040 • dl3455@columbia.edu • (440) 371-8064

**EDUCATION**

**Columbia Law School**, New York, NY

J.D. expected May 2024

Honors: Harlan Fiske Stone Scholar

Activities: Columbia Journal of Environmental Law, Senior Submissions Editor  
Pro Bono Chair, OutLaws  
Treasurer, Health Law Association  
Research Assistant to Professor Talia Gillis (Spring 2023)  
Teaching Assistant to Professor Kellen Funk (Federal Courts, Fall 2023)  
Teaching Assistant to Professor Jane Ginsburg (Legal Methods II, Spring 2023 & Spring 2024)  
Teaching Assistant to Professor Shyamkrishna Balganesh (Legal Methods, Fall 2022)  
Federal Appellate Court Externship with Judge Robert Sack (Fall 2022)  
Research Assistant to Professor Maeve Glass (Summer 2022)

**Boston University**, Boston, MA

B.A., *magna cum laude*, in International Relations and Economics, received May 2020

Honors: Economics Thesis

Activities: Boston University International Affairs Association

Study Abroad: Boston University Paris Campus, France, Spring 2019

**Milbank LLP**, New York, NY

*Summer Associate*

Summer 2023

Assisting in a SPAC contract dispute. Researching fraudulent concealment, fraudulent inducement, and state hearsay standards. Attending depositions and trials. Assisting pro bono clients regarding juvenile detention and post-Dobbs research.

**LGBT Bar Association of New York**, New York, NY

*Hank Henry Judicial Fellow*

Summer 2022

Completed rotations with judges in New York state courts. Researched and wrote bench memoranda regarding pending motions for summary judgment, pending motions in limine, and case summaries for Associate Judge Anthony Cannataro, New York Court of Appeals, Justices Goetz, Perry, Silber and Silvera of New York Supreme Court, and Judge Vargas, New York Court of Claims. Attended trials, hearings, oral arguments, and observed jury selection.

**Flag Media Analytics**, Washington, D.C.

*Extern*

Fall 2020 – Spring 2021

Provided client firms with banking, finance, ESG, insurance, and manufacturing news in real-time. Planned social events for analysts and externs.

**Rubin Pfeffer Content, LLC**, Boston, MA

*Extern*

Summer 2019

Read 6-7 young adult fiction manuscripts/samples per week (approximately 1000 pages). Fact-checked each manuscript to ensure that its representation of diversity was authentic and accurate. Recommended promising manuscripts for publication.

**Office of Senator Kirsten Gillibrand (D-NY)**, New York, NY

*Intern*

Summer 2019

Aided constituents with housing, 9/11-related health conditions, and labor matters, handling more than 100 cases. Generated a searchable database of federal, New York State, and New York City affordable housing subsidies and programs for internal use.

**LANGUAGE SKILLS:** French (intermediate), Mandarin (conversational)

**INTERESTS:** Chess, Dungeons & Dragons, opera, watching figure skating, novel writing



## Registration Services

law.columbia.edu/registration  
 435 West 116th Street, Box A-25  
 New York, NY 10027  
 T 212 854 2668  
 registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/11/2023 18:31:52

Program: Juris Doctor

DanLan Luo

## Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6341-1	Copyright Law	Wu, Timothy	3.0	B+
L6425-1	Federal Courts	Funk, Kellen Richard	4.0	A-
L8671-1	S. Art, Cultural Heritage and the Law	Levine, Jane	2.0	A
L6683-1	Supervised Research Paper	Pannu, Camille	2.0	A

**Total Registered Points: 11.0****Total Earned Points: 11.0**

## Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6664-1	Ex. Federal Appellate Court	Cepeda Derieux, Adriel I.; Parker, Barrington; Sack, Robert D.	1.0	CR
L6664-2	Ex. Federal Appellate Court - Fieldwork	Cepeda Derieux, Adriel I.; Parker, Barrington; Sack, Robert D.	3.0	CR
L6169-2	Legislation and Regulation	Menand, Lev	4.0	A-
L6675-1	Major Writing Credit	Pannu, Camille	0.0	CR
L6338-1	Patents	Long, Clarisa	3.0	A
L8412-1	S. Trial Skills: Immigration	Harbeck, Dorothy	3.0	B+
L6683-1	Supervised Research Paper	Pannu, Camille	1.0	A

**Total Registered Points: 15.0****Total Earned Points: 15.0**

## Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6133-1	Constitutional Law	Glass, Maeve	4.0	B+
L6231-1	Corporations	Talley, Eric	4.0	A-
L6108-1	Criminal Law	Godsoe, Cynthia	3.0	B+
L6865-1	Environmental Law Moot Court	Amron, Susan	0.0	CR
L6121-38	Legal Practice Workshop II	Amron, Susan	1.0	P
L6116-1	Property	Balganesh, Shyamkrishna	4.0	B+

**Total Registered Points: 16.0****Total Earned Points: 16.0**

Page 1 of 2



**January 2022**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-3	Legal Methods II: Methods of Statutory Drafting and Interpretation	Ginsburg, Jane C.	1.0	CR

**Total Registered Points: 1.0****Total Earned Points: 1.0****Fall 2021**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-1	Civil Procedure	Cleveland, Sarah	4.0	A-
L6105-2	Contracts	Gillis, Talia	4.0	B+
L6113-4	Legal Methods	Strauss, Peter L.	1.0	CR
L6115-2	Legal Practice Workshop I	Newman, Mariana; Perszyk, Alena M	2.0	P
L6118-1	Torts	Liebman, Benjamin L.	4.0	B

**Total Registered Points: 15.0****Total Earned Points: 15.0****Total Registered JD Program Points: 58.0****Total Earned JD Program Points: 58.0****Honors and Prizes**

Academic Year	Honor / Prize	Award Class
2022-23	Harlan Fiske Stone	2L



**Camille Pannu**  
Associate Clinical Professor of Law and  
Director

**Just Transition Clinic**  
435 West 116th Street, Box D6  
New York, NY 10027  
T 212-854-4635 M 212-854-4291  
cpannu@law.columbia.edu

June 12, 2023

**Re: Letter of Recommendation for DanLan Luo clerkship application**

Dear Judge:

It is my pleasure to provide my enthusiastic support for DanLan (“Danni”) Luo’s application to clerk in your chambers. I first met Danni when she began the process of drafting her student note, which focuses on two notoriously complex areas of law: western water rights and the reserved rights of Federal Indian tribes in the Colorado River Basin. Over the course of the past year, I have worked closely with Danni on the evolution of her note and as an advisor to the *Columbia Environmental Law Journal*. Through the note-writing process, I have been impressed with the depth and sophistication of Danni’s research, analysis, and clear writing style. Perhaps most importantly, Danni is a truly lovely person who is a joy to work with, and I believe she would thrive within chambers.

**Intellectual Rigor, and Legal Research and Writing Skills**

Danni is a thorough and sharp legal thinker who navigates dense, technical legal issues and distills those issues in her writing. When she first mentioned that she was interested in writing on the effects of climate change on water availability in the Colorado River Basin and its implications for Federal Indian Tribes, I was skeptical. Not only is western water law extremely complex, conflicts over reserved rights within the Colorado River Basin have resulted in decades-long litigation and countless judicial opinions. A law student could easily spend their entire law school career reading cases regarding water allocation in the Colorado River Basin and emerge just as confused as when they began. Danni, however, remained undaunted. She was interested in determining whether there may be footholds within existing law for tribal governments to leverage to address the catastrophic effects of drought within the Basin.

Danni’s research is uniquely sophisticated among her peers, and her writing organizes and clarifies complex issues for non-experts in the field. Danni undertook an exceptionally comprehensive research process that involved reading and analyzing thousands of pages of case law, treaties, treatises, and pleadings dating back to the *Winters* doctrine, 207 U.S. 564 (1908). She additionally read several lengthy histories of the Colorado River Basin, advocacy material from the parties in *Arizona v. Navajo Nation* (currently pending before the U.S. Supreme Court), and

several scientific articles regarding climate change and drought modeling in the basin. Most students would not have been able to identify or take in the wide breadth of research that Danni conducted, let alone synthesize that information and produce an original analysis.

Danni is genuinely passionate about research and learning, and her passion is perhaps best exemplified by the breadth of her research and teaching assistantships. Danni has worked for law professors in differing fields (artificial intelligence, intellectual property, civil procedure and federal courts, property, legal history) who utilize completely disparate methodologies in their research, including quantitative social science methods and historical methodology. Danni has a nimble and curious mind, and she facilely applies interdisciplinary research methods, in addition to her already solid legal research skills, across substantive areas of law.

In addition to the strength of her legal research and writing skills, I have been especially struck by Danni's empathy and understanding of the practical issues undergirding her research. It would be easy to get lost in climate modeling or case law and produce a purely doctrinal argument with limited value. Danni's interest in this topic was motivated by the real-life repercussions of drought and reserved water rights litigation on the lives and livelihoods of tribal and non-tribal communities. Throughout her research, she never lost sight of the power dynamics between litigants and the practical implications of litigation. Her research recognizes that the stakes are high for all those who live in the river basin, and it approaches the fragility of the river ecosystem with sensitivity to those who rely upon it.

### **Ability to Work Independently and in a Team**

Danni is humble, thoughtful, and hard working. She is self-directed and able to create internal timelines with adequate time for review, and she organizes her questions to maximize our time together in meetings. She is reliable, efficient, and able to balance projects with competing deadlines while producing high-quality work product. Danni seeks out and receives feedback with gratitude and is able to apply that feedback immediately. This ability can be seen in her transcript, where her course performance has been on an upward trajectory during her law school tenure.

Danni is also kind, welcoming, and mindful of her role when working with groups. She exercises quiet leadership in which she mobilizes her peers by listening to their concerns and engaging her classmates in collective efforts, spanning from organizing pro bono service trips to coordinating submissions for the *Columbia Journal of Environmental Law*. She has an effervescent personality, and her smile is contagious. Her peers visibly brighten when she enters the room, and it seems that a weight is lifted from their shoulders when she joins them.

I have no doubt that Danni has the technical precision, collegiality, and intellectual rigor to be an excellent law clerk. Her keen mind, diligence, and clear communication skills will enable her to make significant contributions to the work of chambers. I am happy to discuss her application further and can be reached by cell phone (925-899-8383), or by email (cpannu@law.columbia.edu).

Respectfully,



Camille Pannu  
Associate Clinical Professor of Law and Director, Just Transition Clinic  
Columbia Law School